CFR PARTS AFFECTED IN THIS ISSUE

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Presidential Documents

Title 3—

The President

Proclamation 6777 of March 14, 1995

National Day of Prayer, 1995

By the President of the United States of America

A Proclamation

Our Nation was built on the steadfast foundation of the prayers of our ancestors. In times of blessing and crisis, stability and change, thanksgiving and repentance, appeals for Divine direction have helped the citizens of the United States to remain faithful to our long-standing commitment to life, liberty, and justice for all.

This reliance on spiritual assistance has especially characterized times of national transition and uncertainty. As our country was ravaged by the Civil War, Abraham Lincoln remarked, ''I have been driven many times upon my knees by the overwhelming conviction that I had nowhere else to go.'' And with him, millions of slaves cried out to the Almighty for an end to their suffering.

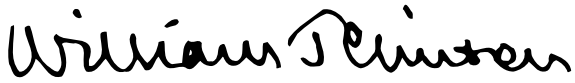
Abolitionist Frederick Douglass said this about the spiritual songs sung on the plantations: ''Every tone was a testimony against slavery, and a prayer to God for deliverance from chains.'' Since that time, we have witnessed tremendous improvements in relations between people of all races and backgrounds. Indeed, long ago, through the work of prayer and common effort, and with the inspiration of the Creator, we began to turn the tide in this Nation from divisiveness and recrimination toward reconciliation and healing.

Let us not forget those painful lessons of our past, but continue to seek the guidance of God in all the affairs of our Nation. We must not become complacent, but rather press onward for the protection of the vulnerable and the downtrodden. In the words of President Lincoln, ''it behooves us then to humble ourselves before the offended Power, to confess our national sins and pray for clemency and forgiveness'' for any injustice we perceive in our midst. May we, the people of this country, set a steady course, dedicated to respect for one another and for individual freedom.

The Congress, by Public Law 100–307, has called on our citizens to reaffirm annually our dependence on Almighty God by recognizing a ''National Day of Prayer.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 4, 1995, as a National Day of Prayer. I call upon every citizen of this great Nation to gather together on that day to pray, each in his or her own manner, for God's continued guidance and blessing.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



[FR Doc. 95–6795
Filed 3–15–95; 2:02 pm]
Billing code 3195–01–P

Rules and Regulations

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Friday, March 17, 1995

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204, 211, 235, 251, 252, 274a, 299, 316 and 334

[INS No. 1703–95]

RIN 1115–AD81

Delay of Effective Date for Establishment of Form I–551, Alien Registration Receipt Card, as the Exclusive Form of Registration for Lawful Permanent Resident Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; delay of effective dates.

SUMMARY: The Immigration and Naturalization Service (''the Service'') is delaying the effective date of a final rule previously published in the **Federal Register** on September 20, 1993, at 58 FR 48775–48780, which provided, *inter alia*, for the termination of the validity of the Form I–151, Alien Registration Receipt Card.

EFFECTIVE DATE: Effective March 17, 1995, the effective date for the regulation published on September 20, 1993, amending 8 CFR Parts 204, 211, 235, 251, 252, 274a, 299, 316, and 334, is delayed until March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1993, the Service published a final rule in the **Federal Register** at 58 FR 48775–48780, establishing the Form I–551, Alien Registration Receipt Card, as the exclusive form of registration for lawful permanent residence, and terminating the validity of the old Form I–151, Alien Registration Receipt Card. In addition, the final rule provided procedures by which a lawful permanent resident alien in possession of a Form I–151 or a prior alien registration document, such as the Form AR–3 or AR–103, could replace these documents with the current Form I–551. The effective date of the amendments to 8 CFR part 264 concerning application procedures became effective on October 20, 1993. The final rule also provided that the effective date for the removal of references to the Form I–151 from 8 CFR parts 204, 211, 223, 235, 251, 252, 274a, 299, 316, and 334 would be September 20, 1994, on which date the validity of the Form I–151 would officially terminate. On September 14, 1994, the Service published a final rule in the **Federal Register** at 59 FR 47063, which extended the validity of the I–151 by delaying the effective date of the amendments to 8 CFR parts 204, 211, 223, 235, 251, 252, 274a, 299, 316, and 334, until March 20, 1995. This rule further extends the validity of the I–151 by delaying the effective date of the amendments to 8 CFR parts 204, 211, 235, 251, 252, 274a, 299, 316, and 334, until March 20, 1996. Delaying the effective date of the amendment to 8 CFR 223 is not necessary since, pursuant to a final rule published on January 11, 1994, at 59 FR 1455–1466, that part no longer contains a reference to Form I–151.

This delay in the effective date is necessary in order to minimize the possibility that lawful permanent resident aliens who apply for either a replacement Form I–551 card or for naturalization prior to March 20, 1995, as a result of the I–151 replacement program, will not have had their applications adjudicated before their old registration cards expire. The I–151 replacement program will terminate on March 20, 1995. Any application for a replacement I–551 card or for naturalization filed by the bearer of a Form I–151 or prior alien registration document after that date will not be considered as having been filed pursuant to the I–151 replacement program. Applicants who wait until after March 20, 1995, to replace their cards or to apply for naturalization assume a much greater risk of being inconvenienced in the event that their applications are not adjudicated prior to the expiration of the Form I–151 on March 20, 1996. Accordingly, lawful permanent resident aliens in possession of a Form I–151 or prior alien registration document issued before 1979 who have not already applied to replace that card with a Form I–551 or for naturalization are urged to apply without delay. For the convenience of the public, these application forms may be ordered by telephone, toll-free, by calling: 1–800–755–0777.

The implementation of this rule as a final rule is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reason for the immediate implementation of this final rule is as follows: A notice and comment period for a proposed rule is impracticable and contrary to the public interest. Absent an extension of the validity of the Form I–151, several aliens who have applied for replacement I–551 cards or for naturalization pursuant to the I–151 replacement program would no longer have valid evidence of their status after March 20, 1995. Accordingly, this regulation affords a benefit rather than a burden or penalty of any kind on affected persons.

Dated: March 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–6711 Filed 3–16–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 113

[Docket No. 92–201–2]

Viruses, Serums, Toxins, and Analogous Products; General Requirements for Inactivated Bacterial Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to include a general standard requirement for inactivated bacterial products that is consistent with the general standard requirements

for live bacterial products, killed virus vaccines, and live virus vaccines. We are also including criteria and test concerning the identity of master seed. Finally, the amendment provides a choice of the most appropriate test methods, including identity tests, for the broad range of inactivated bacterial products available today. The final rule is necessary to update the current standards and provide uniform, relevant criteria for inactivated bacterial products.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Pacer, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, MD 20737–1228, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations in 9 CFR part 113, standard requirements are prescribed for the licensing of veterinary biological products. A standard requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product.

On March 1, 1994, we published in the **Federal Register** (59 FR 9681–9682, Docket No. 92–201–1) a proposal to amend the regulations by revising § 113.100 to include the relevant criteria for evaluation of the purity, safety, and identity of inactivated bacterial products. In addition, we proposed to define the master seed concept as it applies to inactivated bacterial products. This action was intended to provide specific criteria for these inactivated bacterial products. We also proposed to move certain definitions from § 113.100 to part 101.

We solicited comments on our proposal for a 60-day period ending May 2, 1994. We received one comment by that date. This comment was from a licensed manufacturer of veterinary biological products. The commenter's only concern was about the manufacture of inactivated bacterial products for fish.

The commenter sought clarification of our requirement for safety tests as proposed in § 113.100(b). This requirement states that each bacterial product shall be evaluated in mice and/or guinea pigs with the exception that, if the product is specific for poultry, then the safety test will be performed in poultry. The commenter suggested that an exception similar to that for poultry should be considered for products specifically intended for fish. We agree with the rationale of the commenter because it would be more appropriate to evaluate the safety of a biological product intended for fish in an aquatic species than in a mammalian species. In response to the commenter, we have amended the proposal by adding a new paragraph (b)(3) in § 113.100 concerning fish and including other aquatic species or reptiles which states: ''The product is recommended for fish, other aquatic species or reptiles. In such instances, the product shall be safety tested in fish or other aquatic species or reptiles as required by specific Standard Requirement or Outline of Production for the product.'' We have also made a slight change to the definitions to clarify the fact that the defined products are inactivated bacterial products.

Therefore, with the exception of the above changes, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

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

There are currently no general requirements for inactivated bacterial products in the regulations. However, approximately 30 percent of the 114 currently licensed veterinary biologics companies manufacture inactivated bacterial products. Many of these companies are considered small entities and will benefit from the adoption of this rule. The benefits of the rule include increased efficiency and reduced time and expense in accomplishing the steps toward licensure of an inactivated bacterial product. These benefits will be realized because of ready access to clear requirements, uniformity and consistency in product development, and the alleviation of unnecessary steps in production of these type of products. These companies should not experience any additional costs above those which they currently incur to license an inactivated bacterial product as a result of adoption of this rule.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 ad 113 are amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.3, is amended by adding, at the end of the section, the following definitions to read as follows:

§ 101.3 Biological products and related terms.

* * * * *

(m) *Bacterin.* An inactivated bacterial product consisting of an antigenic suspension of organisms or particulate parts of organisms, representing a whole culture or a concentrate thereof, with or without the unevaluated growth products, which has been inactivated as demonstrated by acceptable tests written into the filed Outline of Production for the product.

(n) *Toxoid.* An inactivated bacterial product which consists of a sterile, antigenic toxin or toxic growth product, which has resulted from the growth of bacterial organisms in a culture medium from which the bacterial cells have been removed, which has been inactivated

without appreciable loss of antigenicity as measured by suitable tests, and which is nontoxic as demonstrated by acceptable tests written into the filed Outline of Production.

(o) *Bacterin-toxoid.* An inactivated bacterial product which is either:

(1) A suspension of organisms, representing a whole culture or a concentrate thereof, with the toxic growth products from the culture which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, the inactivation of organisms and toxins being demonstrated by acceptable tests written into the filed Outline of Production: *Provided,* That it shall contain cellular antigens and shall stimulate the development of antitoxin; or

(2) A combination product in which one or more toxoids or bacterin-toxoids is combined with one or more bacterins or one or more bacterin-toxoids.

(p) *Bacterial extract.* An inactivated bacterial product which consists of the sterile, nontoxic, antigenic derivatives extracted from bacterial organisms or from culture medium in which bacterial organisms have grown.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 217, 2.51, and 371.2(d).

4. In § 113.100, the heading, introductory paragraph, and paragraphs (a) through (d) are revised to read as follows:

§ 113.100 General requirements for inactivated bacterial products.

Unless otherwise prescribed in an applicable Standard Requirement or in the filed Outline of Production, an inactivated bacterial product shall meet the applicable requirements in this section.

(a) *Purity tests.* (1) Final container samples of completed product from each serial and each subserial shall be tested for viable bacteria and fungi as provided in § 113.26.

(2) Each lot of Master Seed Bacteria shall be tested for the presence of extraneous viable bacteria and fungi in accordance with the test provided in § 113.27(d).

(b) *Safety tests.* Bulk or final container samples of completed product from each serial shall be tested for safety in young adult mice in accordance with the test provided in § 113.33(b) unless:

(1) The product contains material which is inherently lethal for mice.

In such instances, the guinea pig safety test provided in § 113.38 shall be conducted in place of the mouse safety test.

(2) The product is recommended for poultry. In such instances, the product shall be safety tested in poultry as defined in the specific Standard Requirement or Outline of Production for the product.

(3) The product is recommended for fish, other aquatic species, or reptiles. In such instances, the product shall be safety tested in fish, other aquatic species, or reptiles as required by specific Standard Requirement or Outline of Production for the product.

(c) *Identity test.* Methods of identification of Master Seed Bacteria to the genus and species level by laboratory tests shall be sufficient to distinguish the bacteria from other similar bacteria according to criteria described in the most recent edition of ''Bergey's Manual of Systematic Bacteriology'' or the American Society for Microbiology ''Manual of Clinical Microbiology''. If Master Seed Bacteria are referred to by serotype, serovar, subtype, pilus type, strain or other taxonomic subdivision below the species level, adequate testing must be used to identify the bacteria to that level. Tests which may be used to identify Master Seed Bacteria include, but are not limited to:

(1) Cultural characteristics,

(2) Staining reaction,

(3) Biochemical reactivity,

(4) Fluorescent antibody tests,

(5) Serologic tests,

(6) Toxin typing,

(7) Somatic or flagellar antigen characterization, and

(8) Restriction endonuclease analysis.

(d) *Ingredient requirements.* Ingredients used for the growth and preparation of Master Seed Bacteria and of final product shall meet the requirements provided in § 113.50. Ingredients of animal origin shall meet the applicable requirements provided in § 113.53.

* * * * *

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6648 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 93–057–2]

Viruses, Serums, Toxins, and Analogous Products; Sampling of Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the number of representative samples of product that a firm is required to submit to the Animal and Plant Health Inspection Service for testing at the National Veterinary Services Laboratories, Ames, Iowa. The amendment is applicable to diagnostic test kits and Master Seeds and Cells, and will codify provisions which are not currently in the regulations.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Pacer, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road, Unit 148, Riverdale, MD 20737–1228, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 113 contain standard requirements for evaluating veterinary biological products that are licensed by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, under the Virus-Serum-Toxin Act of 1913, as amended by the Food Security Act of 1985. Licenses are required to show that biological products are pure, safe, potent, and efficacious.

Purity and identify tests are performed by the licensee and the National Veterinary Services Laboratories (NVSL) on master seed(s) and master cell stock(s) used in the production of veterinary biological products. The licensee is also required to perform tests on the completed veterinary biological product for purity, safety, and potency as prescribed in a filed outline of production or applicable standard requirements for the product in accordance with § 113.5. The licensee's test results may be confirmed by NVSL personnel using representative biological product samples that the manufacturer is required to submit to APHIS in accordance with § 113.3.

Section 113.3 currently provides licensees and permittees with criteria for selection and submission of veterinary biological products, such as

vaccines, bacterins, antiserums, and toxoids to NVSL. Section 113.3, however, does not state the number of samples of diagnostic test kits and master seeds and cells required by NVSL for product evaluation. These amendments specify that a minimum of 1 sample of a diagnostic test kit, 10 samples of bacterial master seeds, 13 samples of viral master seeds, and 36 milliliters of master cell stocks will be required for evaluation at NVSL.

Finally, minor editorial changes are made in § 113.309 to reflect organizational changes within APHIS.

On March 24, 1994, we published in the **Federal Register** (59 FR 13896–13897, Docket No. 93–057–1) the proposal to amend § 113.3.

We solicited comments for a 60-day period ending May 23, 1994. Two comments were received by that date. Both comments were from licensed manufacturers of veterinary biological products. The commenters were in favor of the proposed rule, but suggested certain changes.

The first commenter felt that the 1 milliliter (ml) sample volume for master seeds and cells was too restrictive and suggested that a volume of ''1 ml or larger'' be specified along with a minimum total volume. Proposed paragraph (c) of § 113.3 specified that ''a minimum individual volume of 1 ml shall be submitted.'' The proposed wording thus did not restrict the total volume to only 1 ml. In response to the commenter, we have amended § 113.3(c)(3) as follows:

> Thirty-six samples of at least 1 ml each or six samples of at least 1 ml each, one sample of at least 20 ml, and one sample of at least 10 ml of Master Cell Stocks. In the case of Master Cell Stocks which are persistently infected with a virus, an additional four samples of at least 1 ml each are required. If these persistently infected cell stocks are intended for use in more than one species, an additional two samples of at least 1 ml are required for each additional species.

The second commenter requested clarification regarding diagnostic test kits when the final product packages contains more than one microtiter test plate. Several diagnostic test kits are designed to use 96-well microtiter test plates or 12- or 16-well microtiter test strips. The proposed rule (§ 113.3(b)(7)) specified the submission of ''two samples of diagnostic test kits'' as a general rule and ''a minimum of one diagnostic kit'' in the preamble of the rule. As the commenter pointed out, multiple test plates or test strips may be packaged together with other test reagents in a single product. In the case of a product with multiple microtiter test plates or test strips, APHIS would not need to test all of the test plates or test strips for proper evaluation of the product. In response to the commenter, we have amended § 113.3(b)(7) and § 113.3(e)(1) to require the submission of a specified number of test plates or test strips along with all other test reagents as prescribed in a filed Outline of Production when a diagostic test kit contains multiple microtiter test plates or test strips.

Executive Order 12866 and Regulatory Flexibility Act

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

There are currently no criteria in the regulations which specify the number of samples needed by NVSL to evaluate diagnostic test kits and Master Seeds and Cells. Almost all of the 114 licensed veterinary biologics companies currently submit samples of Master Seeds and Cells to NVSL for testing. In addition, at least 25 of these companies produce veterinary diagnostic test kits and submit samples of them to NVSL for testing. Many of these companies would be considered small entities. This rule will benefit these entities by clarifying the current requirements.

This rule will reduce the licensees' time and expense in submitting samples to the NVSL by specifying the number of samples required, by increasing the uniformity of sample submissions, and by allowing for more efficient handling of samples by licensees and APHIS personnel. In addition, this amendment could increase revenues for manufacturers of veterinary diagnostic test kits by allowing them to return unrequested samples to inventory for sale.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform: This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*.).

List of Subjects in 9 CFR Part 113

Animal biologics Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 is amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 113.3, paragraphs (b)(7), (b)(8) and (b)(9) are revised, paragraph (b)(10) is removed, paragraph (c) is revised, and new paragraphs (d) and (e) are added to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(7) *Diagnostic test kits:* Two samples of diagnostic test kits. The licensee or permittee will hold one of these selected samples at the storage temperature recommended on the label while awaiting a request by the animal and Plant Health Inspection Service to submit the additional sample. If submission is not requested by the Animal and Plant Health Inspection Service, the additional sample may be returned to the serial inventory after the serial is released. In the case of diagnostic test kits in which final packaging consists of multiple microtiter test plates or strips, the licensee or permittee may submit a specified number of test plates or strips along with all other test reagents as prescribed in a filed Outline of Production and retain a similar amount as a second sample for submission upon request. When the initial sample is not representative of final packaging by the licensee of permittee, e.g., does not consist of all the microtiter test plates or strips, the second sample is not eligible to be returned to serial inventory after the serial is released.

(8) *Autogenous biologics:* Ten samples shall be selected from each serial of autogenous biologic that exceeds 50 containers. No samples, other than those

required by paragraph (e) of this section, are required for a serial of autogenous biologic with 50 or fewer containers.

(9) *Miscellaneous:* The number of samples from products not in the categories provided for in paragraphs (b)(1) through (b)(8) of this section shall be prescribed in the filed Outline of Production for the product.

(c) Prelicensing and Outline of Production changes: Samples needed to support a license application or a change in the Outline of Production for a licensed product shall be submitted only upon request from the animal and Plant Health Inspection Service. Except for miscellaneous products specified in paragraph (b)(9) of this section, the number of such samples shall be at least one and one-half times the number prescribed for such product in paragraph (b) of this section. Samples of Master Seeds and Master Cell Stocks with a minimum individual volume of 1 ml shall be submitted as follows:

(1) Ten samples of Bacterial Master Seeds.

(2) Thirteen samples of viral Master Seeds or nonviral Master Seeds requiring cell culture propagation. For Master Seeds isolated or passed in a cell line different from the species of intended use, an additional 2 samples are required for each additional species. For Master Seeds grown in cell culture and intended for use in more than one species, an additional 2 samples are required for each additional species.

(3) Thirty-six samples of at least 1 ml each or six samples of at least 1 ml each, one sample of at least 20 ml, and one sample of at least 10 ml of Master Cell Stocks. In the case of Master Cell Stocks which are persistently infected with a virus, an additional four samples of at least 1 ml each are required. If these persistently infected cell stocks are intended for use in more than one species, an additional two samples of at least 1 ml each are required for each additional species.

(4) Four samples of the Master Cell Stock + n (highest passage) cells.

(d) Sterile diluent: A sample of Sterile Diluent shall accompany each sample of product, other than Marek's Disease Vaccine, if such diluent is required to rehydrate or dilute the product before use. The volume of diluent shall be an appropriate amount to rehydrate or dilute the product. Samples of Sterile Diluent prepared for use with Marek's Disease Vaccine shall be submitted upon request from the Animal and Plant Health Inspection Service.

(e) Reserve samples shall be selected from each serial and subserial of biological product. Such samples shall be selected at random from final containers of completed product by an employee of the Department, of the licensee, or of the permittee, as designated by the administrator. Each sample shall:

(1) Consist of 5 single-dose packages, 2 multiple-dose packages, or 2 diagnostic test kits, except that, in the case of diagnostic test kits in which final packaging consists of multiple microtiter test plates or strips, a sample may consist of a specified number of test plates or strips along with all other test reagents as prescribed in a filed Outline of Production;

(2) Be adequate in quantity for appropriate examination and testing;

(3) Be truly representative and in final containers;

(4) Be held in a special compartment set aside by the licensee or permittee for holding these samples under refrigeration at the storage temperature recommended on the labels for 6 months after the expiration date stated on the labels. The samples that are stored in this manner shall be delivered to the Animal and Plant Health Inspection Service upon request.

(Approved by the Office of Management and Budget under control number 0579–0013)

§ 113.309 [Amended]

3. In § 113.309, paragraph (c)(4), the words ''Veterinary Services'' are removed and the words ''Animal and Plant Health Inspection Service'' are added in their place.

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6649 Filed 3–16–95; 8:45 am]

Billing Code 3410–34–M

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9 CFR Part 113

[Docket No. 92–132–2]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Standard Requirements concerning Dog Safety Testing; Canine Distemper Vaccine, Killed Virus; Canine Hepatitis Vaccine, Killed Virus; Canine Adenovirus Type 2 Vaccine, Killed Virus; Mink Enteritis Vaccine, Killed Virus; Canine Hepatitis Vaccine, Live Virus; Canine Adenovirus Type 2 Vaccine, Live Virus; and Canine Distemper Vaccine, Live Virus. The amendments are necessary because new test methods and procedures have been developed that can replace current test requirements and increase the validity of test results. The effect of the amendments is to provide new test methods and procedures and to relax some of the restrictions currently in effect. Also, the Standard Requirement for Canine Distemper Vaccine (Ferret Virulent) is removed because this vaccine is no longer manufactured.

EFFECTIVE DATE: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, MD 20737–1228, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 ''Standard Requirements'', (referred to below as the regulations) consist of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) for the evaluation of veterinary biological products based upon their purity, safety, potency, and efficacy. The Agency periodically reviews the regulations and amends test methods and procedures as required to ensure that they are consistent with current scientific knowledge. On July 23, 1993, we published in the **Federal Register** (*see* 58 FR 39467–39473, Docket No. 92–132–1) a proposed rule to update the regulations based upon current scientific knowledge.

We solicited comments concerning our proposal for a 60-day comment period ending September 21, 1993. We received four comments by that date. One commenter fully supported the proposal as written. Three commenters suggested changes to certain sections related to the Standard Requirements. These comments are discussed below.

Two commenters suggested changes to § 113.204. Both commenters indicated that the portion of the regulations dealing with the time(s) of feces collection for virus detection required clarification, and suggested that feces collection at some point from day 4 to 8 would be appropriate.

APHIS believes that the above comments have merit. APHIS agrees that feces collection early or late in the collection period, or more than once, is unnecessary. Therefore, APHIS has revised the regulations in § 113.204(b)(2) to specify that feces are

to be collected once from day 4 through day 8.

One of the two commenters stated that the term ''virus isolation'' should be defined and that methods other than that specified, ''virus isolation and/or fluorescent antibody examination,'' should be allowed for the detection of virus in feces. APHIS agrees that not only ''virus isolation'' but the whole phrase ''virus isolation and/or fluorescent antibody examination'' needs clarification. Therefore, we have revised the regulations in § 113.204(b)(2) to specify that cell culture with fluorescent antibody examination is the acceptable method of virus detection. APHIS does not agree, however, with the suggestion that other methods of virus detection should be specified in the regulations presently. We believe that cell culture with fluorescent antibody examination is the most sensitive and specific method of virus detection. Should APHIS become aware of another method that is superior to that indicated, it would consider rulemaking to specify that method in the regulations.

One of the two commenters also stated that unvaccinated control mink in immunogenicity studies should not be considered susceptible to challenge if the animals exhibit clinical signs but do not shed virus. The second commenter stated that the determination of virus shedding in animals used for immunogenicity studies should not be required if four or five of the five unvaccinated control mink exhibit clinical signs. APHIS does not agree with either commenter. We believe that the absence of appropriate clinical signs in vaccinated mink challenged with virulent mink enteritis virus together with clinical signs in unvaccinated control mink after challenge is sufficient evidence of the effectiveness of the challenge. We also believe that an effective vaccine against mink enteritis should prevent virus shedding. No change in the regulations is made in response to these comments.

As a final comment on § 113.204, one commenter criticized what the commenter thought was a Standard Assay Method (SAM) developed by the National Veterinary Services Laboratories for challenging mink with mink enteritis virus. No such SAM has been prepared. What has been prepared is more appropriately termed a ''bench protocol.'' Since the protocol was not addressed in the proposed rulemaking, no change to the regulations is made based on this comment.

Comments on the three other Standard Requirements included in the proposed rule (§§ 113.40, 113.201, and 113.306) were received from another commenter. Two of the comments related to the route of canine distemper virus challenge and the requirements for satisfactory vaccine performance in a repeat immunogenicity study. The commenters requested that § 113.306 concerning live virus vaccines be changed to specify an intranasal rather than the traditional intracerebral route of challenge. No amendments to the route of challenge or repeat immunogenicity requirements were proposed in § 113.306. An intracerebral challenge has been used successfully for many years with the live virus vaccine. It was the proposed amendments to § 113.201 that changed the route of challenge from intranasal to intracerebral for killed virus vaccines to be consistent with that specified for live virus vaccines in § 113.306. Since the commenters focussed only on § 113.306 and that section is not being amended as to route of challenge, no change to the regulations is made in response to these commenters.

The same commenter also claimed that the proposal would result in the overuse of Master Seed and suggested that material obtained after five passages of Master Seed be used instead. APHIS disagrees with this comment. In requiring that Master Seed be used, the proposed change is consistent with other regulations in part 113. We believe that testing the Master Seed is necessary for a satisfactory determination of its use. No change to the regulations is made in response to this commenter.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed in this document.

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 the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule revises the current Standard Requirements for certain vaccines. Sections 113.201 and 113.202 are amended to revise the potency test performed on each serial of product so that fewer dogs will be used and serology will be used instead of virus challenge. Both of these changes will decrease the costs of production to the manufacturer. In § 113.204, the potency test in mink is changed to require that virus shedding be examined. This change should result in only a minimal increase in cost (less than $100 per test) to the manufacturer. Other changes to the Standard Requirements generally update the Standard Requirements to reflect current scientific knowledge. We do not expect any increase in cost, except as noted above, to the 200 biologics manufacturers affected by this rule. In most cases, we expect the changes will actually decrease the costs for the manufacturers.

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

Executive Order 12372

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 is amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.40 is revised to read as follows:

§ 113.40 Dog safety tests.

The safety tests provided in this section shall be conducted when prescribed in a Standard Requirement or in the filed Outline of Production for a biological product recommended for use in dogs. Serials which are not found to be satisfactory when tested pursuant to

the procedures in this section may not be released for shipment.

(a) The dog safety test provided in this paragraph shall be used when the Master Seed Virus is tested for safety.

(1) The test animals shall be determined to be susceptible to the virus under test by a method acceptable to the Animal and Plant Health Inspection Service.

(2) Each of at least 10 susceptible dogs shall be administered a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose of the vaccine, by the method recommended on the label, and the dog shall be observed each day for 14 days.

(3) If unfavorable reactions attributable to the virus occur in any of the dogs during the observation period, the Master Seed Virus is unsatisfactory. If unfavorable reactions occur which are not attributable to the Master Seed Virus, the test shall be declared inconclusive and may be repeated: *Provided:* That, if the test is not repeated, the Master Seed Virus shall be considered unsatisfactory.

(b) The dog safety test provided in this paragraph shall be used when a serial of vaccine is tested for safety before release.

(1) Each of two healthy dogs shall be administered 10 dog doses by the method recommended on the label and the dogs shall be observed each day for 14 days.

(2) If unfavorable reactions attributable to the biological product occur during the observation period, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the biological product, the test shall be declared inconclusive and may be repeated: *Provided*, That, if the test is not repeated, the serial shall be considered unsatisfactory.

3. Section 113.201 is revised to read as follows:

§ 113.201 Canine Distemper Vaccine, Killed Virus.

Canine Distemper Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.200.

(b) The immunogenicity of vaccine prepared from the Master Seed Virus in accordance with the Outline of Production shall be established. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(1) Twenty-five canine distemper susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine distemper to determine susceptibility. A constant virus-varying serum neutralization test in cell culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(i) The 20 dogs used as vaccinates shall be injected with one dose of vaccine by the method recommended on the label. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) At least 14 days after the last inoculation, the vaccinates and controls shall each be challenged intracerebrally with canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 21 days.

(iii) If at least four of the five controls do not die and the survivor, if any, does not show clinical signs of canine distemper, the test is inconclusive and may be repeated.

(iv) If at least 19 of the 20 vaccinated do not survive without showing clinical signs of canine distemper during the observation period, the Master Seed Virus is unsatisfactory.

(c) *Test requirements for release.* Each serial shall meet the applicable general requirements prescribed in § 113.200 and the special requirements for safety and potency provided in this section.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the serial is unsatisfactory.

(2) *Potency test—serum neutralization test.* Bulk or final container samples of completed product shall be tested for potency using five susceptible dogs (four vaccinates and one control) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine distemper virus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the four vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) *Serology.* At the end of the post vaccination observation period, a second blood sample shall be obtained from each of the five dogs and the serums shall be individually tested for neutralizing antibody against canine distemper virus in the same manner used to determine susceptibility.

(iv) *Interpretation of the serum neutralization test.* If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least three of the four vaccinates in a valid test have not developed titers based upon a final serum dilution of at least 1:50 and the remaining vaccinate has not developed a titer of at least 1:25, the serial is unsatisfactory except as provided in paragraphs (c)(2) (v) and (vi) of this section.

(v) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the control may be challenged intracerebrally with a virulent canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and each animal observed each day for an additional 21 days.

(vi) *Interpretation of the virus challenge test.* For a serial to be satisfactory, all vaccinates must remain free from clinical signs of canine distemper while the control must die of canine distemper. If the control does not die of canine distemper, the test is inconclusive and may be repeated except, that if any of the vaccinates show signs or dies of canine distemper, the serial is unsatisfactory.

4. Section 113.202 is revised to read as follows:

§ 113.202 Canine Hepatitis and Canine Adenovirus Type 2 Vaccine, Killed Virus.

Canine Hepatitis and Canine Adenovirus Type 2 Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the

first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.200.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity by one or both of the following methods. Vaccine used for these tests shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(1) *Immunogenicity for canine hepatitis.* Twenty-five canine hepatitis susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) The 20 dogs to be used as vaccinates shall be injected with one dose of vaccine and the remaining five dogs held as controls. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) Not less than 14 days after the last inoculation, each vaccinate and control shall be challenged intravenously with virulent infectious canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days.

(iii) If at least four of the five controls do not show severe clinical signs of infectious canine hepatitis, the test is inconclusive and may be repeated.

(iv) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of infectious canine hepatitis during the observation period, the Master Seed Virus is unsatisfactory.

(2) *Immunogenicity for canine adenovirus type 2.* Thirty canine adenovirus type 2 susceptible dogs shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) The 20 dogs to be used as vaccinates shall be injected with one dose of vaccine and the remaining 10 dogs held as controls. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) Not less than 14 days after the last inoculation, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(iii) If at least 6 of 10 controls do not show clinical signs of canine adenovirus type 2 infection other than fever, the test is inconclusive and may be repeated.

(iv) If a significant difference in clinical signs in a valid test cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed Virus is unsatisfactory.

(c) *Test requirements for release.* Each serial shall meet the applicable general requirements prescribed in § 113.200, the special requirements for safety provided in this section, and the applicable potency tests provided in this section.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) and/or (c)(3) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if not repeated, the serial is unsatisfactory.

(2) *Potency test for canine hepatitis—serum neutralization test.* Bulk or final container samples of completed product shall be tested for potency using at least five susceptible dogs (four vaccinates and one control) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine adenovirus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) *Serology.* At the end of the postvaccination observation period, a second blood sample shall be obtained from each of the dogs and the serums shall be individually tested for neutralizing antibody against canine adenovirus in the same manner used to determine susceptibility.

(iv) *Interpretation of the serum neutralization test.* If the control(s) has not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least 75 percent of the vaccinates in a valid test have not developed titers based upon final serum dilution of at least 1:10 and the remaining vaccinate(s) has not developed a titer of at least 1:2, the serial is unsatisfactory except as provided in paragraphs (c)(2) (v) and (vi) of this section.

(v) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the control(s) may be challenged intravenously with a virulent canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and each animal observed each day for an additional 14 days.

(vi) *Interpretation of the virus challenge test.* For a serial to be satisfactory, all vaccinates must remain free of clinical signs of canine hepatitis while the control(s) must show severe clinical signs of canine hepatitis. If the control(s) does not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show signs or die of canine hepatitis, the serial is unsatisfactory.

(3) *Potency test for canine adenovirus type 2.* Bulk or final container samples of completed product shall be tested for potency using eight susceptible dogs (five vaccinates and three controls) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine adenovirus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the five vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) Not less than 14 days after the last inoculation, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or

approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(iv) If at least two of three controls do not show clinical signs of canine adenovirus type 2 other than fever, the test is inconclusive and may be repeated.

(v) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service and prescribed in the Outline of Production, the serial is unsatisfactory.

5. Section 113.204 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 113.204 Mink Enteritis Vaccine, Killed Virus.

* * * * *

(b) * * *

(2) *Challenge.* At least 2 weeks after the last inoculation, the five vaccinates and the five controls shall be challenged with virulent mink enteritis virus and observed each day for 12 days. Fecal material shall be collected on one day between days 4–8 (inclusive) postchallenge from each test animal that remains free of enteric signs and tested for the presence of mink enteritis virus by cell culture with fluorescent antibody examination.

(3) *Interpretation.* A serial is satisfactory if at least 80 percent of the vaccinates remain free of enteric signs and do not shed virus in the feces, while at least 80 percent of the controls develop clinical signs of mink enteritis or shed virus in the feces. If at least 80 percent of the vaccinates remain free of enteric signs and do not shed virus in the feces, while less than 80 percent of the controls develop clinical signs of mink enteritis or shed virus in the feces, the test is considered inconclusive and may be repeated: *Provided,* That, if at least 80 percent of the vaccinates do not remain well and free of detectable virus in the feces, the serial is unsatisfactory.

6. Section 113.305 is revised to read as follows:

§ 113.305 Canine Hepatitis and Canine Adenovirus Type 2 Vaccine.

Canine Hepatitis Vaccine and Canine Adenovirus Type 2 Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used in preparing the production seed virus for vaccine production. All serials shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300 except that the dog safety test prescribed in § 113.40(a) shall be conducted by the intravenous route.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity by one or both of the following methods:

(1) *Immunogenicity for canine hepatitis.* Twenty-five canine hepatitis susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs to be used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining five dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(ii) Not less than 14 days postinjection, the vaccinates and the controls shall each be challenged intravenously with virulent infectious canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days.

(A) If at least four of the five controls do not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated.

(B) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of infectious canine hepatitis during the observation period, the Master Seed Virus is unsatisfactory.

(iii) The Master Seed Virus shall be retested for immunogenicity for canine hepatitis in 3 years unless use of the lot previously tested is discontinued. Ten susceptible dogs (8 vaccinates and 2 controls) shall be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(A) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(1)(i) of this section.

(B) At least 14 days postvaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine adenovirus in the same manner used to determine susceptibility.

(C) If the two controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(D) if at least six of the eight vaccinates in a valid test do not develop titers of at least 1:10 based upon final serum dilution, the Master Seed Virus is unsatisfactory except as provided in paragraph (b)(1)(iii)(E) of this section.

(E) if the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the controls may be challenged as provided in paragraph (b)(1)(ii) of this section. A Master Seed is satisfactory if all vaccinates remain free of clinical signs of canine hepatitis, while both controls develop severe clinical signs of canine heptatis. If both controls do not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show such signs, the Master Seed Virus is unsatisfactory.

(2) *Immunogenicity for canine adenovirus Type 2.* Thirty canine adenovirus type 2 susceptible dogs shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs to be used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining 10 dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(ii) Not less than 14 days postinjection, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(A) If at least 6 of 10 controls do not show clinical signs of canine adenovirus type 2 infection other than fever, the test is inconclusive and may be repeated.

(B) if a significant difference in clinical signs in a valid test cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed Virus is unsatisfactory.

(iii) the Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Either 10 vaccinates and 6 controls or 5 vaccinates and 3 controls shall be used in the retest.

(A) If less than 4 of 6 or 2 of 3 of the controls show clinical signs of canine adenovirus type 2 other than fever, the test is inconclusive and may be repeated.

(B) a significant difference in clinical signs shall be demonstrated between vaccinates and controls in a valid test as prescribed in paragraph (b)(2)(ii)(B) of this section.

(iv) an Outline of Production change shall be made before authorization for use of a new lot of Master Seed Virus shall be granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Each serial and subserial shall meet the requirements prescribed in § 113.300 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(1)(i) and/or (b)(2)(i) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test(s) prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test(s) but not less than $10.^{2.5}$ $TCID_{50}$ dose. If both immunogenicity tests in paragraph (b) of this section are conducted and a different amount of virus is used in each test, the virus titer requirements shall be based on the higher of the two amounts.

7. Section 113.306 is revised to read as follows:

§ 113.306 Canine Distemper Vaccine.

Canine Distemper Vaccine shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for preparing the production seed virus for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) *Master Seed Virus.* The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300 and the requirements prescribed in this section.

(1) To detect ferret virulent canine distemper virus, each of five canine distemper susceptible ferrets shall be injected with a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose and observed each day for 21 days. If undesirable reactions are observed during the observation period, the lot of Master Seed is unsatisfactory.

(2) Master Seed Virus propagated in tissues or cells of avian origin shall be tested for pathogens by the chicken embryo test prescribed in § 113.37. If found unsatisfactory, the Master Seed Virus shall not be used.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity. The selected virus dose from the lot of Master Seed Virus shall be established as follows:

(1) Twenty-five canine distemper susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine distemper virus.

(2) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining five dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(3) At least 14 days post-injection, the vaccinates and the controls shall each be challenged intracerebrally with virulent canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 21 days.

(i) If at least four of the five controls do not die and the survivor, if any does not show clinical signs of canine distemper the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of canine distemper during the observation period, the Master Seed Virus is unsatisfactory.

(4) The Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Ten susceptible dogs (8 vaccinates and 2 controls) shall be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(i) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(2) of this section.

(ii) At least 14 days postvaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine distemper virus in the same manner used to determine susceptibility.

(iii) If the two controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If at least 6 of the 8 vaccinates in a valid test do not develop titers of at least 1:50 based upon final serum dilution, the Master Seed Virus is unsatisfactory, except as provided in paragraph (b)(4)(v) of this section.

(v) If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the controls may be challenged as provided in paragraph (b)(3) of this section. A Master Seed is satisfactory if all vaccinates remain free of clinical signs of canine distemper, while the two controls die with clinical signs of canine distemper. If the two controls do not die with clinical signs of canine distemper, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show such signs, the Master Seed Virus is unsatisfactory.

(5) An Outline of Production change shall be made before authorization for use of a new lot of Master Seed Virus shall be granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Except for § 113.300(a)(3)(ii), each serial and subserial shall meet the requirements prescribed in § 113.300 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) The test for pathogens prescribed in § 113.37 shall be conducted on each serial or one subserial of avian origin vaccine.

(2) *Virus titer requirements.* Final container samples of completed product

shall be tested for virus titer using the titration method used in paragraph (b)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test but not less than $10^{2.5}$ $TCID_{50}$ per dose.

§ 113.307 [Removed]

8. Section 113.307 is removed.

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6647 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ACE–02]

Amendment to Class E Airspace; Harvard, NE

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Harvard, NE to accommodate a planned Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) at the Harvard State Airport. This action will provide for additional controlled airspace necessary for the planned VOR/DME SIAP. It will also change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530c, Federal Aviation Administration, 6021 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Harvard, NE (59 FR 3032). The proposed action would provide additional controlled airspace to accommodate a VOR/DME SIAP to Runway 35 at the Harvard State Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA order 7400.9B, dated July 8, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Harvard, NE, by providing additional controlled airspace for aircraft executing the VOR/DME runway 35 SIAP to the Harvard State Airport.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE NE E5 Harvard, NE [Revised]

Harvard State Airport, NE
(Lat. 40°39′15″ N, long. 98°04′31″ W)

That airspace extending upward from 700 feet above the surface within 6.4-mile radius of the Harvard State Airport and within 2 miles each side of the 180° bearing of the Harvard State Airport extending from the 6.4-mile radius to 10 miles south of the airport.

* * * * *

Issued in Kansas City, MO on February 21, 1995.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–6685 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28135; Amdt. No. 1654]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:
1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 10, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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

** * * Effective May 25, 1995*

Manistique, MI, Schoolcraft County, VOR or GPS RWY 28, Orig Manistique, MI Schoolcraft County, VOR RWY 28, Amdt 8, Cancelled Anahuac, TX, Chambers County, NDB OR GPS RWY 30, Amdt 2, Cancelled Anahuac, TX, Chambers County, NDB RWY 12, Orig.

** * * Effective April 27, 1995*

West Palm Beach, FL, North Palm Beach Country General Aviation, VOR RWY 8R, Orig
Harlan, IA, Harlan Muni, NDB OR GPS RWY 33, Amdt 4
Wichita, KS, Wichita Mid-Continent, ILS RWY 19R, Amdt 4
Smithfield, NC, Johnston County, LOC/DME RWY 3, Orig
Wimington, OH, Airborne Airpark, VOR/DME or GPS RWY 22, Amdt 4
Wimington, OH, Airborne Airpark, VOR RWY 22, Amdt 4
Wimington, OH, Airborne Airpark, VOR or GPS RWY 4, Amdt 5
Wimington, OH, Airborne Airpark, NDB RWY 22, Amdt 7
Wimington, OH, Airborne Airpark, NDB RWY 4, Amdt 2
Wimington, OH, Airborne Airpark, ILS RWY 22, Amdt 3
Wimington, OH, Airborne Airpark, ILS RWY 4, Amndt 2

* * * *Effective upon publication*

Philadelphia, PA, Northeast Philadelphia, ILS RWY 24, Amdt 11
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 7
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS RWY 22, Amdt 4
Chesapeake, VA, Chesapeake Muni, LOC RWY 5, Amdt 2
Chesapeake, VA, Chesapeake Muni, NDB OR GPS RWY 5, Amdt 1

[FR Doc. 95–6686 Filed 3–16–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28136 ; Amdt. No. 1655]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMS, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 10, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the

Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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

Effective March 17, 1995

FDC date	State	City	Airport	FDC No.	SIAP
02/22/95	FL	Fort Myers	Page Field	FDC 5/0832	ILS RWY 5 AMDT 6A...
02/22/95	FL	Fort Myers	Page Field	FDC 5/0833	NDB RWY 5 AMDT 5...
02/22/95	MO	Kansas City	Kansas City Intl	FDC 5/0842	ILS RWY 19L, ORIG...
02/22/95	WI	Superior	Richard I. Bong	FDC 5/0843	NDB RWY 31 AMDT 4...
02/23/95	PA	Pittsburgh	Pittsburgh International	FDC 5/0853	ILS RWY 28R AMDT 6...
02/24/95	AK	Nome	Nome	FDC 5/0869	NDB/DME OR GPS–1, RWY 2, ORIG B...
03/01/95	GA	Atlanta	Peachtree City-Falcon Field	FDC 5/0970	VOR/DME RNAV OR GPS RWY TWY 31, ORIG...
03/02/95	KY	Covington	Cincinnati/Northern Kentucky Intl	FDC 5/1007	ILS RWY 36L, AMDT 36...
03/02/95	NC	Greenville	Pitt-Greenville	FDC 5/1058	ILS RWY 19 AMDT 2...
03/02/95	ND	Mohall	Mohall Muni	FDC 5/1002	VOR/DME OR GPS RWY 31 AMDT 2...
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1073	VOR RWY 24 AMDT 23...
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1074	NDB OR GPS RWY 24 AMDT 4...
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1075	ILS RWY 24 AMDT 6...
03/08/95	NC	North Wilkesboro	Wilkes County	FDC 5/1071	NDB OR GPS RWY 1 AMDT 1A...
03/08/95	NC	North Wilkesboro	Wilkes County	FDC 5/1072	LOC RWY 1 AMDT 1...
03/08/95	NC	Statesville	Statesville Muni	FDC 5/1077	VOR/DME RWY 10 AMDT 6A...
03/08/95	NC	Statesville	Statesville Muni	FDC 5/1079	NDB RWY 20 AMDT 8A...
03/08/95	NC	Washington	Warren Field	FDC 5/1078	VOR/DME RWY 5, AMDT 2...

[FR Doc. 95–6687 Filed 3–16–95; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 35473; File Nos. S7–29–93; S7–6–94]

RIN 3235–AG00; 3235–AF84

Payment for Order Flow, Confirmation of Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; change of effective date.

SUMMARY: The Commission is postponing the effective date of Rule 11Ac1–3 and certain amendments to Rule 10b–10 under the Securities Exchange Act of 1934 from April 3, 1995 to October 2, 1995 in order to facilitate the orderly implementation of the enhanced disclosure requirements relating to payment for order flow and non-SIPC membership by broker-dealers.

EFFECTIVE DATES: The effective date of the final rule published on November 2, 1994 (59 FR 55006) is postponed until October 2, 1995. The effective date of § 240.10b–10(a) (9), which was published on November 17, 1995 (59 FR 59612) and which applies to non-SIPC broker-dealers other than government securities broker-dealers, is postponed until October 2, 1995. The effective date of the other amendments to § 240.10b–10 that was published on November 17, 1995, remains April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Carlene Kim, Senior Counsel, at 202/942–4180, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W. Mail Stop 5–1, Washington, D.C. 20549. For questions relating to compliance with new Rule 11Ac1–3 and amendments to Rule 10b–10 concerning payment for order flow, please contact Gail Marshall, Attorney, at 202/942–7129, Office of Market Supervision, Division of Market Regulation. For questions relating to compliance with the amendment to Rule 10b–10 relating to disclosure of a broker-dealer's non-SIPC status, please contact C. Dirk Peterson, Senior Counsel, at 202/942–0073, Office of Chief Counsel, Division of Market Regulation.

SUPPLEMENTARY INFORMATION:

A. Payment for Order Flow

On October 27, 1994, the Commission adopted Rule 11Ac1–3 [17 CFR 240.11Ac1–3] and amendments to Rule 10b–10 [17 CFR 240.10b–10] under the Securities Exchange Act of 1934.[1] Rule 11Ac1–3 requires broker-dealers to disclose, in annual account statements and new account forms, their policies regarding the receipt of payment for order flow and to provide a detailed description of the nature of the compensation received. Rule 11Ac1–3 also requires broker-dealers to provide information about order routing policies for orders subject to payment for order flow, including an explanation of the extent to which orders can be executed at prices superior to the best bid and offer. Rule 10b–10, as amended, requires broker-dealers to state on confirmations whether they receive payment for order flow, and that the source and nature of

[1] Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006.

the compensation will be provided upon written request. The effective date is April 3, 1995.

On October 27, 1994, the Commission also proposed for comment amendments to Rules 11Ac1–3 and 10b–10.[2] The proposed amendments would require broker-dealers to disclose on confirmations the range of payment for order flow received on a per share basis and to provide a statement that, upon written customer request, additional transaction-specific information will be provided. In new customer and annual account statements, broker-dealers would be required to disclose the range of payment for order flow received on a per share basis, as well as the aggregate amount or estimated value of payment for order flow received on an annual basis. The proposals also would require parallel disclosure for orders subject to internalization/affiliate order routing. Finally, the proposals would require broker-dealers to describe their order-routing policies for all orders, including those that are subject of internalization/affiliate order routing, and describe the extent to which such orders may enjoy price improvement opportunities.

The Division of Market Regulation (''Division'') is analyzing the issues raised by the 22 comment letters that were received. A majority of the commenters responding to the proposing release requested that the effective date of any further changes be delayed. Several broker-dealers stated that it would be extremely burdensome for them to make the systems changes required by any additional amendments, given the time and resources demanded by requirements of the newly-adopted changes and the transition to three day settlement. The Division is receiving an increasing number of inquiries from broker-dealers regarding implementation of the adopted rules. Many broker-dealers indicate that systems changes must be made soon in order to be ready for the April 3 effective date. The Division believes that similar systems changes will be necessary to implement any additional requirements based upon the proposed amendments. [3] It would enhance efficiency and reduce costs if broker-dealers could make systems changes at one time rather than potentially be required to make changes twice to implement payment for order flow requirements. The Commission believes, however, that it is not feasible to have any additional changes take effect on April 3.

Accordingly, the Commission believes that an effective date of October 2, 1995 for Rule 11Ac1–3 and amendments to Rule 10b–10 relating to payment for order flow disclosures, adopted on October 27, 1994 and any additional amendments would promote an orderly adjustment to the enhanced disclosure regime.[4] For the reasons discussed above, the Commission for good cause finds that notice and solicitation of comment regarding the effective date is impracticable, unnecessary, and contrary to the public interest.

B. SIPC Status Disclosure

In addition, on November 10, 1994, the Commission adopted amendments to Rule 10b–10 which, among other things, require a broker or dealer that is not a member of the Securities Investor Protection Corporation (''SIPC'') to affirmatively disclose its non-SIPC status on customer confirmations.[5] This requirement is consistent with the Commission's authority under the Government Securities Act Amendments of 1993 to require government securities broker-dealers, which are excluded from SIPC membership, to disclose that they are not SIPC members rather than require them to become members.[6] Congress believed that disclosure was the appropriate approach to remedy the gap in SIPC coverage.

When the Commission adopted this amendment, it stated that confirmation disclosure is necessary ''to ensure that customers are not led to believe that their accounts are subject to protection beyond what actually is the case * * *.'' [7] The Commission recognized that in some situations, however, the costs would exceed the benefits of disclosure, and thus, adopted an exclusion from the disclosure requirement for transactions in investment company shares where the investor sends purchase money directly to a non-affiliated transfer agent, custodian, or other designated agent of the issuing investment company.

In a letter dated February 16, 1995, the Investment Company Institute (''ICI'') expressed concern about the operational consequences, as well as the policy and investor protection implications of non-SIPC status disclosure, and requested that the Commission consider further amending Rule 10b–10. In addition, the ICI requested that the Commission consider extending the effective date of the amendment to Rule 10b–10 requiring disclosure of non-SIPC status. In the ICI's view, it will be particularly burdensome for mutual fund groups to obtain information about the SIPC status of their underwriters. By letter dated December 19, 1994, the College Retirement Equities Fund raised similar concerns with respect to broker-dealers whose business consists exclusively of the sale of variable annuities.

The Commission, therefore, is postponing the effective date from April 3, 1995 to October 2, 1995 of the Rule 10b–10 amendment pertaining to non-SIPC disclosure by broker-dealers that are excluded from SIPC membership pursuant to Section 3(a)(2)(A)(ii) of the Securities Investor Protection Act of 1970. [8]

Dated: March 10, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6576 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Release No. 34903 (October 27, 1994), 59 FR 55014.

[3] In the intervening period, the Commission may also consider further regulatory initiatives regarding payment for order flow in light of the comments received on the proposed amendments, and in light of the pending inquiries into the Nasdaq market by the Commission and the U.S. Department of Justice.

[4] The staff of the Division will not recommend that the Commission take enforcement action under Rule 10b–10, if broker-dealers comply with the requirements of amended Rule 10b–10 as of April 3, 1995. With respect to new customer and annual account statements, broker-dealers may, of course, also elect to comply with the requirements of Rule 11Ac1–3 prior to October 2, 1995.

[5] See Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612. All broker-dealers registered as government securities brokers and dealers under Section 15C of the Exchange Act, 15 U.S.C. 78*o*–5, are excluded from SIPC membership. While most brokers and dealers registered with the Commission under Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b) are required to be SIPC members, some of these persons are excluded from SIPC membership, as well. 15 U.S.C. 78lll(12). Among those excluded from SIPC membership under the Securities Investor Protection Act of 1970 are broker-dealers whose business consists exclusively of (a) the distribution of shares of registered investment open-end companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to registered investment companies or insurance company separate accounts. 15 U.S.C. 78ccc(a)(2)(A)(ii).

[6] In a report to Congress, the GAO recommended that government securities brokers and dealers be required to become members of SIPC, or in the absence of membership, disclose that they are not SIPC members. See S. Rep. No. 422, 103rd Cong., 1st Sess. 16 (1993). Congress subsequently amended Section 15C of the Exchange Act to prohibit government securities brokers and dealers from effecting a transaction in any security in contravention of Commission rules requiring the timely disclosure that a customer's account is not protected by SIPC. See 15 U.S.C. 78*o*–5(a)(4).

[7] Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612.

[8] 15 U.S.C. 78ccc(a)(2)(A)(ii).

The effective date of this provision remains April 3, 1995, however, for all other brokers and dealers.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Wyoming regulatory program (hereinafter referred to as the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA). Wyoming is revising its regulations at Appendix B—Wildlife Monitoring, both in response to required amendment sat 30 CFR 950.16(aa), and on its own initiative. The amendment is intended to revise the Wyoming program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

III. Proposed Amendment

By letter dated November 8, 1994, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. WY–28–01). Wyoming submitted the proposed amendment in response to the required program Amendment at 30 CFR 950.16(aa) an also included a State initiated change. The provisions of its program that Wyoming proposed to revise are: Appendix B—Wildlife Monitoring, Section C and E. On its own initiative, at Section C, the State proposed to modify the requirements for raptor nest status and production success surveys. At Section E and in response to a required amendment placed on Wyoming's program at 30 CFR 950.16(aa) in the October 7, 1993, OSM rulemaking (58 FR 52232), Wyoming proposed to remove language that would exclude the need to promptly report all observations of migrating and wintering bald eagles or migrating peregrine falcons.

OSM announced receipt of the proposed amendment in the December 6, 1994, **Federal Register** (59 FR 62645), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY–28–09). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 5, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 an 732.17, finds that the proposed program amendment submitted by Wyoming on November 8, 1994, is no less effective than the Federal program requirements and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Appendix B, Section C Raptor Production, Nest Status and Production Success

As a result of discussions with the U.S. Fish and Wildlife Service (USFWS), the Wyoming Game and Fish Division (WGFD), and mining industry biologists, the Wyoming Land Quality Division (LQD) proposes to modify requirements for raptor nest status and production success surveys. Survey requirements presently include: An annual search within the permit area and within a 1 mile perimeter to locate known and new or previously unrecorded nests; an initial survey in March for golden eagle and great horned owl nests; and mid-May through mid-June survey to locate other new raptor nests and to check the status of known nest. The current program further requires that all nest checks are to be conducted from a distance; that productivity checks shall be conducted on active nests; and that the status and productivity of all nests are to be reported annually.

The changes being proposed by LQD are as follows: Modify the requirement that the golden eagle and great horned owl nest survey be conducted within ½ mile of existing mining activities and those mining activities proposed for the coming year on or before mid-February instead of March; require the following three, thorough surveys covering the entire permit area and within 1 mile: During March to locate golden eagle and great horned owl nests, an April survey to locate nests of most other species, and a survey in mid-May through mid-June to locate new raptor nests and to check the status of all known nests. Also added, is a requirement to conduct follow up visits for previously identified nests timed to facilitate documentation of occupied territories, nest building, incubation and fledgling success according to the biology of the species present and variation in breeding chronology among study areas.

The above modifications and additions add more specificity to Wyoming's survey requirements and provide for more desirable survey dates for gathering data on nests. Earlier identification of nests (i.e., before eggs are laid) will allow early mitigation action and therefore less chance for conflicts with the mining operations. The changes mutually agreed to by the groups involved are not inconsistent with the Federal program requirements. The Director is therefore approving the proposed changes.

2. Appendix B, Section E. Federally Listed Threatened and Endangered Species

Wyoming proposes to modify the introductory paragraph of Section E, specifying the requirements for reporting observations of threatened and endangered species, by (1) removing the language that would exclude the need to report observations of migrating and wintering bald eagles or migrating peregrine falcons, and (2) adding language to clarify that reporting observations of Federally listed threatened and endangered species must be to the regulatory authority as required by the LQD regulation at Chapter IV, Section 2.(r)(i)(E), unless otherwise specified by the USFWS in the approved threatened and endangered species plan. Item number (1) above in response to a program amendment placed on the Wyoming program as a result of the October 7, 1993, OSM rulemaking (58 FR 52232), codified at 30 CFR 950.16(aa). The removal of the language to exclude reporting of migrating and wintering bald eagles or migrating peregrine falcons satisfies the required amendment at 30 CFR 950.16(aa). The Director is therefore removing the required amendment from 30 CFR 950.16. Item number (2) above merely provides reference to the specific rule that requires reporting to the regulatory authority unless otherwise specified by the USFWS (the Federal agency responsible for the administration of

threatened and endangered species). The proposed change would make the reporting requirement in the Appendix consistent with the corresponding performance standard at Chapter IV, Section 2.(r)(i)(E), of Wyoming's regulations. In addition, the proposed change is consistent with the corresponding Federal reporting requirement at 30 CFR 816.97(b) and 817.97(b). Based on the above discussion, the Director is approving both modifications to Section E.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Wyoming program.

The U.S. Bureau of Mines responded on November 30, 1994, that it had no comment (administrative record No. WY–28–10).

The U.S. Corps. of Engineers responded on December 1, 1994, saying that they found the changes to be satisfactory to their agency (administrative record No. WY–28–11).

The Mine Safety and Health Administration (MSHA) responded on December 16, 1994, that the amendments do not conflict with MSHA's regulations and do not appear to affect the health and safety of the Nation's miners (administrative record No. WY–28–12).

The Bureau of Land Management responded on December 28, 1994, that the monitoring requirements appeared to prescribe a comprehensive and appropriate wildlife monitoring effort, but suggested that a cross check with the minimum data standards prepared for the Regional Coal Teams be made to make sure the State regulations are consistent with those standards. The Wyoming program requires extensive premining data gathering whose level of detail must be determined in consultation with the Wyoming Game and Fish Department and other Federal agencies having responsibility for management or conservation of such environmental activities (Wyoming rule at Chapter II, Section 2., (a), (vi), (G)). A statement of how the applicant will utilize monitoring methods as specified in Appendix B is required in the permit application (Wyoming rule at Chapter II, Section 2, (b), (vi), (b). Wyoming also has performance standards for Fish and Wildlife reclamation that must be met (Wyoming rule at Chapter IV, Section 2.,(r)) and elsewhere through out Chapter VI). The above requirements for permit application information, monitoring during the mining operation, and carrying out reclamation assure that appropriate consideration and consultation by the agencies responsible is obtained on a site specific basis. In addition, the previously approved Wyoming regulations are no less effective than the corresponding requirements in the Federal regulations. The minimum data standards prepared for the Regional Coal Teams$_2$, while certainly providing helpful guidelines, are not required as part of Wyoming's surface coal mining program. Based on the above discussion, the Director is not requiring Wyoming to modify its program in response to the BLM's comments (administrative record No. WY–28–14).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Wyoming proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's comments on the proposed amendment (administrative record No. WY–28–05). EPA responded to OSM's request on December 21, 1994, (administrative record No. WY–28–13) that they did not believe there would be any impacts to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record Nos. WY–28–04 and WY–28–03). Neither SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves Wyoming's proposed amendment as submitted on November 8, 1994, that modifies Appendix B, Section C, concerning requirements for survey of raptor nest status and production success; and Appendix B, Section E, concerning the reporting of threatened and endangered species when observed. The Director approves the changes as proposed by Wyoming with the provision that they be fully promulgated in identical form as submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on

proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

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

PART 950—WYOMING

1. The authority citation for Part 950 continues to read as follows:

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

2. Section 950.15 is amended by adding paragraph (v) to read as follows:

§ 950.15 Approval of amendments to the Wyoming regulatory program.

* * * * *

(v) The following program changes, as submitted to OSM on November 8, 1994, are approved effective March 17, 1995: Appendix B, Section C concerning dates for conducting raptor surveys; and Appendix B, Section E concerning the reporting of observed migrating and wintering bald eagle or migrating peregrine falcons and observations of other Federally listed threatened and endangered species.

§ 950.16 [Amended]

3. Section 950.16 is amended by removing and reserving paragraph (aa).

[FR Doc. 95–6589 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 20

Implementation of WORLDPOST Priority Letter

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: WORLDPOST Priority Letter (WPL) is a new international mail service designed for correspondence and documents. WPL items receive priority handling in the United States and in destination countries. Initially, the service will be available to 14 destination countries, from specified post offices in seven metropolitan areas. To use WPL, a customer must use either of the two flat-rate envelopes designed for this service and provided by the Postal Service. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations take effect March 16, 1995. Comments must be received on or before April 17, 1995.

ADDRESSES: Written comments should be mailed or delivered to International Product Management, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 5300, Washington, DC 20260–2410. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Mitchell, (202) 268–6095.

SUPPLEMENTARY INFORMATION: Under the Universal Postal Convention, international mail items bearing the ''exprès'' logo receive priority handling in destination countries. A number of postal administrations take advantage of that provision by offering their customers an international mail service that is based on, but superior to, normal airmail service. In contrast, the only single-piece international service the Postal Service offers that is superior to airmail is Express Mail International Service (EMS), which is significantly more expensive than airmail. In order to provide its customers with a wider range of international services, the Postal Service is implementing, on a pilot basis, WORLDPOST Priority Letter (WPL).

WPL is an expedited airmail service providing fast, reliable, and economical delivery of all items mailable as letters. Although a WPL item will travel in the normal airmail stream between the United States and the destination country, the item will receive priority handling in the United States and, typically, in the destination country. In the United States, after the item is deposited, the Postal Service will transport it in a dedicated stream to the appropriate gateway for dispatch. Upon arrival in the destination country, the item will also receive priority handling.

Initially, WPL is available to the following 14 countries: Australia, Belgium, Canada, France, Germany, Great Britain, Hong Kong, Japan, New Zealand, Norway, Singapore, Sweden, Taiwan, and The Netherlands. Based on the Postal Service's evaluation of WPL performance during the pilot test, the service may be extended to additional destination countries.

Initially, WPL is available only from specified ZIP Codes in the following seven metropolitan areas: Atlanta, Boston, Dallas/Fort Worth, Los Angeles, Miami, New York, and Washington, DC. The Postal Service chose these initial acceptance sites because of their ability to provide reliable transportation of items deposited there to the WPL gateways, as well as their potential to generate significant WPL volume. Based on the Postal Service's evaluation of WPL performance during the pilot test, the service may be extended to additional acceptance sites.

To use WPL, a customer will be required to place the material being mailed in either the small (5 inches by 8⅞ inches) or large (9 inches by 11½ inches) WPL envelope provided by the Postal Service. These envelopes bear the appropriate internationally recognized logo for this service. In addition, their colorful design will facilitate recognition of the items by U.S. and foreign postal employees, which will help to ensure that the items receive priority handling.

Rates are based on size (either small or large) and destination as follows:

Destination	Envelope size	
	Small	Large
Western Europe	$3.75	$6.95

Destination	Envelope size	
	Small	Large
Pacific Rim	4.95	8.95
Canada	3.75	6.95

Accordingly, the Postal Service hereby adopts WPL, on an interim basis, at the rates set forth in the schedule above. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by adding new part 226 to read as follows:

2 CONDITIONS FOR MAILING

* * * * *

226 WORLDPOST Priority Letter (Interim Regulations/Standards)

226.1 General

226.11 Definition

WORLDPOST Priority Letter (WPL) is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters. WPL items receive priority handling in the United States and in destination countries. Service is available only to destination countries identified in 226.2, from post offices identified in 226.3. WPL items must be mailed in special envelopes provided for this purpose by the Postal Service.

226.12 Permissible Items

All items admitted in letters (see 221.1) are accepted in WPL as long as the contents fit securely into the WPL envelopes provided by the Postal Service. WPL items may contain dutiable merchandise unless the country of destination prohibits dutiable merchandise in letters (see 224.51). However, WPL items that contain dutiable merchandise might experience delay in delivery caused by customs handling.

226.13 Addressing

See 122. All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country.

226.2 Availability

WORLDPOST Priority Letter service is available only to the following countries:

Western Europe	Pacific Rim	Canada
Belgium	Australia	Canada
France	Hong Kong	
Germany	Japan	
Great Britain*	New Zealand	
Norway	Singapore	
Sweden	Taiwan	
The Netherlands.		

*Includes all points in England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, and the Isle of Man.

226.3 Mailing Locations

226.31 Acceptance Offices and Pickup Service Locations

WPL service is available only through the designated post offices listed in 226.32.

WPL items must not be accepted or deposited in areas not listed in 226.32.

226.32 Service Areas

Service is available only from the metropolitan areas as defined by the ZIP Code ranges shown below. Within these service areas, prepaid items may be given to carriers, deposited in Express Mail collection boxes, or mailed at post offices, stations, and branches. Pickup service is available.

Metropolitan area	ZIP code service area
Atlanta, GA	300–303, 305, 306, 311
Boston, MA	018–024
Dallas/Ft. Worth, TX.	750–754, 760–762, 764
Los Angeles, CA.	900–918, 926–928
Miami, FL	330–334, 349
New York, NY	068, 069, 100–108, 110–118
Washington, DC.	200, 201, 203, 205, 20813–20815, 20817, 20850–20852, 20854, 20855, 20898, 20901, 20902, 20904, 20906, 20907, 20910–20912, 222, 223

226.4 Postage

226.41 Rates

Rates are based on size (either small or large) and destination as follows:

Destination	Envelope size	
	Small	Large
Western Europe	$3.75	$6.95
Pacific Rim	4.95	8.95
Canada	3.75	6.95

226.42 Pickup Service

On-call and scheduled pickup service are available for WORLDPOST Priority Letters for a charge of $4.95 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee is charged if domestic or international Express Mail, domestic Priority Mail, or domestic or international parcel post is picked up at the same time. (See DMM D010 for standards for pickup service.)

226.43 Postage Payment Methods

Postage for WORLDPOST Priority Letters may be paid by adhesive stamps, postage meter and meter stamps, or, if presented at a post office, postage validation imprinter (PVI) labels.

226.5 Packaging

Items must be placed in special WORLDPOST Priority Letter envelopes provided by the Postal Service. All items that cannot be adequately protected by these envelopes should not be mailed using this service. Envelopes must be sealed.

226.6 Size and Weight Limits

226.61 General

Two sizes of envelopes are available from the Postal Service for mailing WPL items. Postage rates are based on the size of the envelope used, not the weight of the item. (See 226.41 for rates.)

226.62 Size Limits

Sizes of the required Postal Service-provided envelopes are:

a. Small size—5 inches by 8–7/8 inches.

b. Large size—9 inches by 11–1/2 inches.

226.63 Weight Limits

The Postal Service-provided envelopes are not intended to accommodate items weighing more than several ounces. However, the maximum weight for letter-class (LC) items is 4 pounds.

226.7 Customs Forms Required

If WORLDPOST Priority Letters contain dutiable merchandise, the sender must prepare a customs declaration and affix it to the letter. See 123 for instructions. Certain nonpostal export forms may be required as described in Chapter 5.

226.8 Special Services

Mailers may obtain certificates of mailing (see 310). No other special services such as registry, insurance, restricted delivery, return receipt, or recorded delivery are available.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–6776 Filed 3–16–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5173–6]

Massachusetts; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the Commonwealth of Massachusetts' application for final approval.

SUMMARY: The Commonwealth of Massachusetts has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. 9004. The Environmental Protection Agency (EPA) has reviewed Massachusetts's application and has reached a final determination that Massachusetts's UST Program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to Massachusetts to operate its program in lieu of the Federal UST program.

EFFECTIVE DATE: Final approval for the Commonwealth of Massachusetts' UST Program shall be effective at 1:00 p.m. on April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Myra Schwartz, Office of Underground Storage Tanks, HPU–CAN7, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, (617) 573–5743.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in a state in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be ''no less stringent'' than the Federal program, and (2) provide for adequate enforcement. Section 9004 (a) and (b) of RCRA, 42 U.S.C. 6991c (a) and (b).

On October 5, 1992, as required by 40 CFR 281.50(c), EPA acknowledged receiving from Massachusetts a complete official application requesting final approval to administer its UST program. On May 17, 1994, EPA published a tentative decision announcing its intent to grant Massachusetts final approval of its program. See 59 FR 25588 (1994). Further background on EPA's tentative decision to grant approval is included in that decision.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA received written and oral comments on the application, and a public hearing was held on June 30, 1994.

Three commentators raised concerns regarding the applicability of environmental justice to the Massachusetts UST program implementation. EPA notes that Massachusetts' receipt of Federal financial assistance subjects Massachusetts to the obligations of Title VI of the Civil Rights Act of 1964. EPA is committed to working with Massachusetts to support and ensure compliance with all Title VI requirements. Furthermore, the narrative portion of Massachusetts' application expresses its voluntary support of environmental justice principles in the management of the UST program. Although this is not a criterion for program approval, EPA acknowledges Massachusetts' support of environmental justice principles.

B. Decision

I conclude that Massachusetts' application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Massachusetts is granted final approval to operate its UST program in lieu of the Federal program. Massachusetts now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the Federal UST program, except with regard to Indian lands, where EPA will continue to have regulatory authority. Massachusetts also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e. EPA will continue to work together with the Massachusetts Department of Environmental Protection (DEP) in its ongoing commitment and efforts to address environmental justice concerns in low-income urban and minority neighborhoods in Massachusetts.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain federal regulations in favor of Massachusetts' Program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within Massachusetts. It does not impose any new burdens on small entities. This rule, therefore, does not require flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials.

Authority: Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–6675 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 281

[FRL–5173–5]

Texas; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Texas' application for final approval.

SUMMARY: The State of Texas has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Texas' application and has reached a final determination that Texas' UST program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to Texas to operate its program.

EFFECTIVE DATE: Final approval for Texas shall be effective at 1:00 p.m. Central Standard Time on April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Womack, Texas Program Officer, Underground Storage Tank Program, US EPA, Region 6, Mailcode: 6H–A, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214)665–6586.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve State UST programs to operate in the State in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be ''no less stringent'' than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(a)).

B. Texas

On April 28, 1994, Texas submitted an official application for final approval. On January 24, 1995, EPA published a tentative decision announcing its intent

to grant Texas final approval. Further background on the tentative decision to grant approval appears at 60 FR 4586, January 24, 1995.

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also provided notice that a public hearing would be provided only if significant public interest was shown. No requests to present testimony at the public hearing were submitted and no written comments on the application were submitted.

D. Decision

I conclude that the State of Texas' application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Texas is granted final approval to operate its UST program in lieu of the Federal program. Texas now has the responsibility for managing UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Texas also has primary enforcement authority, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for owners and operators of USTs in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative Practice and Procedure, Hazardous Materials, State Program Approval, Underground Storage Tanks.

Authority: This Notice is issued under the authority of section 2002(a), 7004(b), and 90044 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: March 7, 1995.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 95–6674 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–125, FCC 95–42]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Eighth Order on Reconsideration to revise certain cable regulations affecting small systems and certified local franchising authorities. Certified local franchising authorities, independent small systems, and small systems owned by small multiple system operators (''small MSOs'') will be permitted to enter into alternative rate regulation agreements that comply with the Communications Act of 1934, as amended.

EFFECTIVE DATE: April 14, 1995, except for 47 CFR section 76.934(f)(2) which will become effective upon OMB approval. The Commission will issue written confirmation of OMB approval at a later date.

FOR FURTHER INFORMATION CONTACT: Susan Cosentino, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Eighth Order on Reconsideration in MM Docket No. 92–266 and MM Docket No. 93–215, FCC 95–42, adopted February 3, 1995 and released February 6, 1995.

The complete text of this Eighth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Eighth Order on Reconsideration

The 1992 Cable Act requires the Commission to reduce regulatory burdens and the cost of compliance for small systems. Small systems are defined in the statute as systems serving 1,000 or fewer subscribers. Pursuant to that mandate, the Commission has created different regulatory approaches that are available to small systems.

The Cable Telecommunications Association (''CATA'') and other groups generally believe that our efforts have not produced the intended result of reducing administrative burdens and costs for smaller systems. Preliminarily, industry associations and individual operators assert that small systems face higher costs than other cable operators. In our Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking (''Fifth Reconsideration Order''), MM Docket No. 92–266 and MM Docket No. 93–215, FCC 94–234, 59 FR 51869 (October 13, 1994), we sought comment on definitions of small businesses that could be used to define eligibility for any special rate or administrative treatment. In response, a number of commenters point out that smaller systems do not qualify for the volume discounts offered by equipment and program suppliers to larger systems. In addition, commenters observe that a smaller system serving a large rural area faces increased construction costs due to the increased amount of cable that must be installed to reach the entire area and increased operating costs given the greater amount of facilities that must be maintained. Moreover, commenters note that the total costs for which a small system is responsible must be recovered from a small subscriber base. Although our current rules take into account the number of subscribers a system has, the commenters are unanimous that the rules do not do so adequately. CATA further asserts that complexities in our rules, and the cost of enforcing them, have discouraged local franchising authorities in smaller communities from seeking certification. While CATA highlights the fact that, even in these circumstances, the mere potential of rate regulation hinders small systems in their attempts to obtain financing and capital, thus increasing their cost of doing business, we are equally concerned that there are local franchising authorities which desire to regulate basic rates but which lack the resources to do so in accordance with our existing rules.

Based on these factors, these groups have urged the Commission to adopt different and less stringent rules for small cable companies. In comments and in a letter to Chairman Reed E. Hundt, CATA proposes an alternative rate regulation scheme that differs significantly from the present method of rate regulation which CATA, and other commenters, claim is too complicated and burdensome. CATA's proposal is as

follows: The Commission should permit local franchising authorities and small systems to create their own alternative rate regulation plan, not based on the Commission's benchmark/cost-of-service rules, but still adhering to the regulatory factors of the 1992 Cable Act. CATA states that alternative regulation should be available to all small systems of 1,000 or fewer subscribers regardless of whether they are currently subject to regulation and without regard to system ownership or affiliation with an MSO of any size. CATA envisions that the parties could agree to regulate rates for the basic service and cable programming service (''CPS'') tiers, as well as going forward, inflation, and external cost issues. Rate increases also could be agreed to in advance. If a small system and a local franchising authority entered into an alternative regulation plan affecting the CPS tier, subscribers could still file a rate complaint with the Commission. Under CATA's proposal, both the small system and the local franchising authority would have to consent to the alternative regulatory framework. If the parties could not agree on an alternative approach, the local franchising authority would regulate rates, if at all, using Commission rules.

Based on comments received in response to the Fifth Reconsideration Order, and in light of other pending petitions for reconsideration, we reconsider on our own motion the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 94–38, 59 FR 18064 (April 15, 1994) as it relates to rate regulation of small systems. We believe that, subject to modifications discussed below, the alternative rate regulation framework proposed by CATA is consistent with the spirit and the letter of the Communications Act of 1934, as amended (''Communications Act''). Accordingly, we will establish an alternative form of rate regulation for independent small systems and small systems owned by small MSO's based upon CATA's suggestions. We limit availability of this alternative process to independent small systems and small systems owned by small MSOs because we believe that larger systems have the financial and administrative resources necessary to comply with our benchmark and cost-of-service rate regulations. A small MSO is an MSO serving 250,000 or fewer total subscribers that owns only systems with less than 10,000 subscribers each and has an average system size of 1,000 or fewer subscribers. However, in the future, we may modify our eligibility standards in response to action we take in our proceeding on system size definitions.

Congress acknowledged the special circumstances faced by small systems by specifically directing the Commission to reduce the administrative burdens and cost of compliance for them. We believe that this goal can best be achieved by giving certified local franchising authorities and eligible systems discretion to agree to an alternative form of rate regulation that will involve a traditional bargaining process guided by the specific criteria set forth in the Communications Act as being relevant to the establishment of rates for basic services and cable programming services. This framework will free both the cable operator and the local franchising authority from the burdens and costs of analyzing and applying our benchmark and cost-of-service rules.

While minimizing regulatory burdens, the alternative rate regulation agreements that the parties may create also will further the goal of ensuring reasonable rates by requiring local franchising authorities to take into account specific factors, identified by Congress, when imposing rate regulations for both the basic service tier and cable programming service tiers. With respect to basic service, those criteria are:

[1] The rates for cable systems, if any, that are subject to effective competition;

[2] The direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B) [Communications Act § 623 (b)(7)(B), 47 U.S.C. 543(b)(7)(B)], and changes in such costs;

[3] Only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

[4] The revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

[5] The reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

[6] Any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

[7] A reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1) [Communications Act § 623 (b)(1), 47 U.S.C. 543(b)(1)].

Among other factors, the criteria to be used in establishing the rates to be charged for cable programming services are:

[1] The rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

[2] The rates for cable systems, if any, that are subject to effective competition;

[3] The history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

[4] The rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

[5] Capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

[6] The revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

We believe the rules we adopt here properly take into account these statutory factors. As a preliminary matter, we note that alternative rate regulation agreements will present an option for local franchising authorities and small systems. Both parties remain free to insist on analysis under our existing rules, which we have already determined take into account the statutory factors. In addition, we believe that small systems and local franchising authorities in markets where small systems provide service are likely to be familiar with the facts and circumstances underlying the factors for their particular markets. Moreover, the statutory factors must be taken into

account in negotiating alternative rate regulation agreements.

Given its knowledge of local conditions and its experience with the cable operator, the local franchising authority often will be in the best position to assess the relative importance of these criteria and to gather the relevant facts accordingly. Moreover, since a small system is likely to be located in an area with a relatively small population, we expect that the local franchising authority will be particularly responsive to the needs and desires of cable subscribers. This circumstance should give the local franchising authority substantial encouragement and leverage to guard against any attempt by the cable operator to view the alternative framework as an avenue to achieve unreasonable rates. Indeed, unless and until an alternative rate agreement is reached, the local franchising authority will always be able to rely upon the general benchmark/cost-of-service rules, further ensuring the reasonableness of the rates permitted under an alternative rate regulation agreement. Thus, we conclude that rates subject to alternative rate regulation agreements by small systems will be reasonable.

Further, we believe that alternative rate regulation agreements will assist the Commission in ensuring that rates for cable programming services are not unreasonable. As part of the alternative process, certified local franchising authorities are required to take into account relevant statutory factors to ensure that rates for CPS tiers are not unreasonable before entering into the negotiated agreement. The Commission, however, shall retain jurisdiction over cable programming service rates.

As discussed below, the local franchising authority must be certified in accordance with our standard procedures. Before entering into an alternative rate regulation agreement, the local franchising authority must take into account the relevant criteria discussed above and must provide for public notice and comment. Finally, all alternative rate regulation agreements will be subject to Commission review, as mandated by the Communications Act. For data collection purposes, and to assist the Commission in evaluating complaints, eligible cable operators must file with the Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date.

As with any local franchising authority seeking to enforce rate regulations, a local franchising authority that elects to regulate pursuant to an alternative rate agreement must file the certification required by Section 623(a)(3) of the Communications Act and our rules. The certification process shall be governed by our existing rules applicable to local franchising authorities who wish to regulate cable operators according to the benchmark and cost-of-service rules. No alternative rate regulation agreement will be effective until the effective date of the certification. However, this does not preclude a local franchising authority that has yet to be certified from entering into an alternative rate agreement that is conditioned upon the effectiveness of the local franchising authority's certification. Alternatively, the parties may wait until after the franchising authority is certified to begin their negotiations. A local franchising authority that already is certified by the Commission may enter into an alternative rate agreement with the cable operator at any time. We note that the cable operator will be subject to the standard benchmark/cost-of-service rules upon the expiration of an alternative rate agreement. Thus, the local franchising authority shall accept as reasonable the basic service rate in effect at the time the agreement expires and may apply benchmark/cost-of-service rules on a going-forward basis to determine the reasonableness of proposed changes to basic service rates stemming from external costs, inflation, and the addition, deletion, or substitution of channels.

The alternative approach may be pursued only by agreement of both the cable operator and the local franchising authority. To ensure maximum freedom from regulatory constraints, we will not establish any requirements to control the negotiation process. We note, however, that the scope of alternative agreements is limited exclusively to the regulation of rates charged for basic service and CPS tiers and the equipment used to receive these tiers. Thus, certified local franchising authorities may not enforce state/local negative option billing laws that conflict with federal negative option billing rules. See 47 CFR 76.981. See also Memorandum Opinion & Order, LOI–93–14, DA 95–60 (Cab. Serv. Bur. Jan. 20, 1995); Memorandum Opinion & Order, LOI–93–2, DA 95–61 (Cab. Serv. Bur. Jan. 20, 1995); Consolidated Memorandum Opinion & Order, LOI–93–1, et al., DA 95–106 (Cab. Serv. Bur. Jan. 25, 1995). There are numerous provisions of federal law which may not be waived, even by agreement of the local franchising authority and the small system, unless waivers are provided for in the Commission's rules. These provisions include, but are not limited to, geographically uniform rates structures, tier buy-through prohibitions, technical standards, must-carry obligations, and retransmission consent. See 47 CFR 76.984, 76.921, 76.605, 76.56, 76.64. Moreover, the intention of the alternative framework is not only to ease the cost of compliance with our rules but to ensure that eligible small systems are not required to reduce rates more than required by those rules. Therefore, an alternative rate agreement shall be unenforceable if it requires the cable operator to charge rates lower than would be permitted under the benchmark or cost-of-service rules.

Section 623(a)(3)(C) of the Communications Act requires a local franchising authority to ''provide a reasonable opportunity for consideration of the views of interested parties'' in the course of rate regulation proceedings. Although this provision is applicable to rate proceedings regardless of whether the alternative procedure is followed, we expect this provision to be particularly significant in the context of alternative rate regulation agreements. Active involvement by interested parties at an early stage of the proceedings, i.e., prior to final adoption of an agreement, should reduce the occurrence of complaints after the alternative agreement is implemented. Thus, the local franchising authority shall provide a reasonable opportunity for comment by interested parties, including subscribers, and, based upon its consideration of such comments, modify the agreement to the extent it deems appropriate before submitting the proposal to the cable operator. The local franchising authority need solicit public comment only once and thus is not precluded from entering into an alternative agreement that differs from a proposal that is presented for public comment.

Once a cable operator is subject to rate regulations, the Communications Act and our rules provide various mechanisms for resolving disputes regarding rates and the enforcement of regulations by local franchising authorities. Subscribers and other interested parties may appeal to the Commission a rate decision made by a certified local franchising authority concerning the basic service tier. Our rules also provide for Commission resolution of complaints regarding rates for CPS tiers. The Commission also may review disputes between cable operators and certified local franchising authorities relating to the administration of regulations governing basic service tier rates.

An appeal of a local franchising authority decision approving an alternative rate regulation agreement as it applies to basic service tier rates may be filed with the Commission under our regular procedures. Since we have determined that the agreed upon rate is by definition a reasonable rate, the issue before the Commission will be whether the small system is charging the agreed upon rate and whether the agreement was entered into consistent with our requirements. We also believe it would be useful for potential complainants regarding CPS rates to attempt to resolve their complaints with the local franchising authority when CPS rates are subject to an alternative rate regulation agreement. Given the local franchising authority's role as a party to the agreement, we believe that many CPS rate disputes can be resolved at that level. Thus, we will require as a prerequisite to a CPS complaint to the Commission involving an alternative rate regulation agreement that the complainant provide evidence that he or she was denied the requested relief from the local franchising authority. As with basic service rates, in an FCC complaint the Commission will determine whether the rates are consistent with the agreement and our requirements.

The Commission will resolve all CPS rate complaints pending at the time an alternative rate regulation agreement becomes effective under rules in effect at the time the rates were charged. Parties to an alternative rate regulation agreement must abide by the Commission's decision regarding appropriate remedies for unreasonable rates charged prior to the effective date of an alternative rate regulation agreement. However, the parties remain at liberty to determine reasonable CPS rates to be charged upon the effective date of an alternative rate regulation agreement. We do not believe this will hinder the negotiation process or implementation of an alternative rate regulation agreement because both local franchising authorities and cable operators are served with copies of FCC Form 329 complaints filed with the Commission by a subscriber and will know the status of any complaints at the time negotiations commence. In addition, since entering into an alternative agreement is voluntary, the terms of the agreement shall be binding as between the cable operator and the local franchising authority such that neither party shall be permitted to seek from the Commission relief that is inconsistent with the agreement. Thus, a local franchising authority may not challenge a rate permitted under the terms of the agreement and a cable operator may not seek to increase its rates above what the agreement permits.

We have previously interpreted Section 623(j) of the Communications Act to preclude grandfathering rate agreements entered into after July 1, 1990, in part because we concluded that grandfathering such agreements would conflict with the 1992 Cable Act's intent to abrogate rate agreements entered into after July 1, 1990. The rules we adopt today, permitting certified local franchising authorities to enter into agreements with qualifying cable operators with respect to rates, will be applied in the context of our existing cable rate regulation rules. These rules will provide a framework consistent with the statute, under which any such agreements will be negotiated. In addition, our rules will require local franchising authorities to take into account specific factors identified by Congress when determining rates for both basic and CPS tiers. In light of this requirement, we find such alternative rate agreements, developed in accordance with the statutory factors Congress identified for establishing rules to ensure that basic rates were reasonable and that CPS rates were not unreasonable, consistent with the Communications Act. As such, these agreements do not pose the kinds of conflicts with the 1992 Cable Act that we previously identified when we interpreted Section 623(j) as obviating rate agreements entered into after July 1, 1990.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the Eighth Order on Reconsideration is as follows:

Need and Purpose of this Action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered to reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis. There are no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by SBA in the First Report and Order, MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993).

Significant Alternatives Considered and Rejected. In the course of this proceeding, petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission has attempted to accommodate the concerns expressed by these parties. In this Order, the Commission is providing relief to small systems and certified local franchising authorities by permitting them to enter into alternative rate regulation agreements that do not require completion of any forms.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to Section 4(i), 4(j), 303(r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this Eighth Order on Reconsideration, are adopted and Sections 76.934 and 76.950 of the Commission's rules, 47 CFR Section 76.934 and are amended as set forth in below.

It is further order That, the requirements and regulations established in this decision shall become effective April 14, 1995, with the exception of new reporting requirements which will become effective on that date or as soon thereafter as they may be approved by the Office of Management and Budget.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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

PART 76—CABLE TELEVISION SERVICE

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.934 is amended by adding paragraph (f) to read as follows:

§ 76.934 Small systems and small operators.

* * * * *

(f) *Alternative rate regulation agreements.*

(1) Local franchising authorities, certified pursuant to § 76.910, independent small systems, and small systems owned by small multiple system operators as defined by §§ 76.901 and 76.922(b)(5)(A) may enter into alternative rate regulation agreements affecting the basic service tier and the cable programming service tier.

(2) Small systems must file with the Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date.

(3) Alternative rate regulation agreements affecting the basic service tier shall take into account the following:

(i) The rates for cable systems that are subject to effective competition;

(ii) The direct costs of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to §§ 76.56 and 76.64, and changes in such costs;

(iii) Only such portion of the joint and common costs of obtaining, transmitting, and otherwise providing such signals as is determined to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) The revenues received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) The reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) Any amount required to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) A reasonable profit. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(4) Alternative rate regulation agreements affecting the cable programming service tier shall take into account, among other factors, the following:

(i) The rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(ii) The rates for cable systems, if any, that are subject to effective competition;

(iii) The history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(iv) The rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(v) Capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(vi) The revenues received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(5) Certified local franchising authorities shall provide a reasonable opportunity for consideration of the views of interested parties prior to finally entering into an alternative rate regulation agreement.

(6) A basis service rate decision by a certified local franchising authority made pursuant to an alternative rate regulation agreement may be appealed by an interested party to the Commission pursuant to § 76.944 as if the decision were made according to §§ 76.922 and 76.923.

[FR Doc. 95–6555 Filed 3–16–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[Federal Acquisition Circular 90–23 Correction]

Federal Acquisition Regulation; Technical Correction

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

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to Federal Acquisition Circular 90–23 published on December 28, 1994, at 59 FR 67010. Miscellaneous typographical, editorial, and technical errors appeared in the following areas: FAR Case 91–13—Acquisition of Utility Services, FAR Case 93–27—Cost Accounting Standards Applicability and Thresholds, and in FAR Case 90–62—Construction Contracting.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

41.501 [Corrected]

1. In the **Federal Register** issue of December 28, 1994, under FAR Case 91–13, on page 67022, under 41.501, in the third column, in paragraph (d)(3), in the second line from the bottom of the paragraph following the word ''paragraphs'', ''(f)'' and ''(i)'' should read ''(d)(6)'' and ''(d)(4)'', respectively.

FAR Case 93–27 [Corrected]

2. In the same issue under FAR Case 93–27, on page 67042, in the second column, under **EFFECTIVE DATE**, in the first line at the top, ''February 27, 1994'' should read ''February 27, 1995''.

52.236–27 [Corrected]

3. In the same issue under FAR Case 90–62, on page 67050, in the second column, under paragraph (a), second line from the top, ''Investigations'' should read ''Investigation''.

Dated: March 10, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy, General Services Administration.

[FR Doc. 95–6623 Filed 3–16–95; 8:45 am]

BILLING CODE 6820–34–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1805

Revision to NASA Supplement Coverage on Advance Notification of Significant Procurement Actions

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

ACTION: Final rule.

SUMMARY: NASA is adding a requirement regarding the notification to the NASA Administrator of significant procurement actions. These actions include contractor selections for competitive procurements valued at $25 million or more and noncompetitive contract awards valued at $100 million or more. The purpose of this notification process is to ensure that the Administrator has knowledge of these actions in case of congressional or public inquiries.

EFFECTIVE DATE: March 17, 1995.

ADDRESSES: Office of Procurement, Contract Management Division (Code HK), NASA Headquarters, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, (202) 358–0440.

SUPPLEMENTARY INFORMATION:

Background

Advance notification to the NASA Administrator of large and potentially sensitive contract actions is necessary to ensure that the Administrator has knowledge of these actions in case of Congressional or public inquiries either before or immediately after public announcement of the actions. Notification must be provided to NASA Headquarters (Code HS), by facsimile transmission, at least five (5) work days prior to the intended public announcements of contractor selection and contract award actions. This allows sufficient time for the information to be provided to the Administrator within the Administrator's normal work flow system. Field installations are not to proceed with any announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This rule does not impose any information collection subject to 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Part 1805

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR part 1805 is amended as follows:

1. The authority citation for 48 CFR part 1805 continues to read as follows:

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

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303–70 [Added]

2. Sections 1805–303.70 and 1805–303.71 are redesignated as sections 1805.303–71 and 1805–303.72, and a new section 1805.303–70 is added to read as follows:

1805.303–70 Notification of significant procurement actions.

(a) NASA Headquarters (Code HS) shall be notified of the following procurement actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned announcement of contractor selection and planned contract award for competitive procurements of $25 million or more.

(2) Planned contract award of noncompetitive awards and new work modifications of $100 million or more.

(3) Planned award of other procurement actions at any dollar value thought to be of significant interest to Headquarters.

(b) Field installation procurement officers shall send the information listed in paragraphs (b) (1) through (10) of this section to NASA Headquarters (Code HS) via facsimile transmission (202–358–4065). Immediately prior to transmission, Code HS shall be notified by telephone (202–358–2080) of the impending transmission so that a person may immediately receive the transmission. Code HS will hand-carry the notification to the Office of the Administrator (Code A) and provide a copy to the Associated Administrator for Procurement (Code H) to limit access to the information to those persons authorized to receive such information as described in 48 CFR (FAR) 1803.104–5(c). In accordance with 48 CFR (FAR) 3.104–5(c), all pages that include source selection information shall be marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104.'' The information to be sent is as follows:

(1) Title and a brief nontechnical description of the work, including identification of the program or project.

(2) Type of action (whether the action will result in a new contract or is for additional work under an existing contract).

(3) Type of contract (e.g., Firm-Fixed-Price or Cost type, including whether the cost contract is completion or level-of-effort).

(4) The total contract value for the instant action including all priced options (for selection notifications, this would be the successful offeror's best and final offer (BAFO) amount and, for award notifications, the negotiated value of the contract). Also include the Government's most probable cost.

(5) The name, address, and business size status of the prime contractor and each major (over $1M) subcontractor.

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options.

(7) Work performance location.

(8) Unusual circumstances (briefly describe any facts or events that bear upon this procurement and make it unusual).

(9) Contacts (names and telephone numbers of a prime and alternate center points of contact).

(10) Provide the following information on a separate piece of paper attached to the data for paragraphs (b) (1) through (9) of this section: *For competitive selections only,* furnish the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection, noting that any detailed questions or requests for more specific information should be referred to the source selection official.

(c) Field installations are not to proceed with any announcements until Code HS has advised that the

Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, field installations should proceed with established notification to offerors and press release procedures (See 1805.303–71 and 1805.303–72).

1805.303–71 [Amended]

3. In the redesignated section 1805.303–71, paragraph (a)(1)(iv) is amended by deleting the phrase ''and section 1805.303–70''.

[FR Doc. 95–6440 Filed 3–16–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–113; Amendment 192–71A, 195–49A]

RIN 2137–AB44

Operation and Maintenance Procedures for Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule: Response to Petition for Reconsideration.

SUMMARY: On February 11, 1994, RSPA issued a final rule amending existing operation and maintenance (O&M) procedures for gas pipeline facilities. The American Gas Association (Petitioner or A.G.A.) filed a Petition for Reconsideration (petition) concerning five provisions of the final rule. After careful consideration of the petition, RSPA concludes the petition should be denied in part, and granted in part. RSPA is granting those aspects of the petition that relate to: (1) procedures required to be included in an operator's O&M manual, and (2) the extent of the requirement to address malfunctions and other deviations during abnormal operations.

EFFECTIVE DATE: This final rule takes effect April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366–4571, concerning the contents of this final rule, or the Dockets Unit, (202) 366–4453, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA promulgated the final rule on Operations and Maintenance Procedures for Pipelines (59 FR 6579; February 11, 1994) pursuant to 49 U.S.C. 60101 *et seq.* The purpose of the rule is to ensure that gas pipeline operators maintain thorough gas pipeline operation and maintenance (O&M) procedures. Gas pipeline operators are now required to include detailed procedures on normal and abnormal operation, maintenance and emergency-response activities in their O&M manual. Gas pipeline operators are also responsible for annually reviewing and updating their O&M manual. Furthermore, both gas and hazardous liquid pipeline operators are required to prepare procedures to be followed to safeguard personnel from the hazards associated with the unsafe accumulation of vapor or gas in excavated trenches. As RSPA explained in the final rule, these actions will reduce the likelihood of pipeline failures, and provide a better basis for personnel training.

Summary of Petition and Comments on Petition

In its petition, A.G.A. raised five issues relating to various aspects of the final rule, and requested that RSPA modify or clarify the final rule accordingly. The following sections summarize the issues raised in the petition, and provide RSPA's response to each request.

I. Extent of a Gas Pipeline Operator's Annual Review of its O&M Manual

Petitioner asserts that the requirement that an operator review its activities periodically to determine the effectiveness of its operation and maintenance procedures (49 CFR 192.605(b)(8)) coupled with the limited amount of time estimated to be required to complete an annual update of an operator's procedures supports a change in 49 CFR 192.605(a). Specifically, petitioner urges that the annual review required by section 192.605(a) be limited to changes needed to address any new regulatory changes. Petitioner overstates the burden that an annual review would place on operators if the review is not limited to updates because of regulatory changes. Although the annual review is not limited to regulatory changes, § 192.605(a) does not require an annual line-by-line review of every procedure contained in an operator's manual. Neither does it require an annual comprehensive review of an operator's activities to determine whether changes to the operation and maintenance manual are needed.

The annual review under § 192.605(a) requires that an operator annually review its manual, and that deficiencies identified during periodic reviews of activities (under § 192.605(b)(8)) are addressed. While serious deficiencies, possibly identified following an accident, may require immediate correction of operating procedures, other deficiencies may await an annual update. Updating of operation and maintenance procedures on a regular, established basis makes good business sense and enhances the safe operation of the pipeline. Retaining outdated procedures could confuse an operator's personnel as to the appropriate course of action.

Petitioner stated that 4.4 hours is insufficient time for one of its member operators to complete this review. We agree. The 4.4 hours noted in the preamble was based on 54,300 operators. The majority (52,000) of these operators are the master meter operators, whose plans are expected to be very simple and will have a minimal effect. In the justification to support the Paperwork Reduction Act, RSPA calculated that the initial burden was 104.3 hours per operator (based on 2,300 operators), excluding master meter operators. This 104.3 hours includes 52.2 hours that were already required by earlier O&M regulations. The additional 52.1 burden hours represent a one-time effort to develop additional O&M procedures that will affect these 2,300 operators only in the first year following the publication of this regulation. After the first year, the burden hours of all O&M regulations will return to the annual 52.2 hours per year per operator. The paper work justification is filed in the Docket.

Accordingly, Petitioner's request to limit the annual review required by § 192.605(a) is denied.

II. Procedures Required To Be Included in an Operator's O&M Manual

In its petition, A.G.A. asserts that section 192.605(b) of the final rule should be clarified to reflect that an operator must only include procedures in its manual that are applicable to its particular pipeline system (49 CFR 192.605(b)). Petitioner believes that as written, the regulation requires a gas pipeline operator to include O&M procedures responsive to all of the procedural requirements listed under sections 192.605(b)(1)-(10), regardless of whether particular regulations are applicable to an operator's pipeline system.

In the final rule, § 192.605(b) requires that the O&M manual required by § 192.605(a) must include certain specific procedures to provide safety during maintenance and operations. Sections 192.605(b)(1)–(10) list ten

specific procedural elements which are to be included in the operator's manual. However, not all of these subsections are applicable to operations and maintenance activities at every gas pipeline facility. RSPA never intended that a gas pipeline operator have every procedure set forth in those subsections. In response to comments, RSPA stated in the preamble to the final rule (59 FR 6580) that:

> RSPA requires operators to prepare O&M procedures only for those pipeline facilities within their system. For example, it would not be necessary to prepare compressor startup procedures if the company has no compressors. The procedures should be clear, straightforward and applicable to the company's system.

Petitioner suggests that the words ''if applicable'' be added after the word ''following'' to the text of § 192.605(b) to clarify that procedures be prepared for operational situations only to the extent that an operator will face such a situation.

RSPA agrees that the regulation, as written, may seem to unnecessarily require an operator to produce procedures relating to the operation of a gas pipeline system that have no practical value to anyone. Therefore, RSPA is amending the final rule by adding the term ''if applicable'' in the text of § 192.605(b) after the word ''following.''

III. Procedures Regarding Protection of Personnel in Excavated Trenches From Unsafe Accumulations of Vapor or Gas

Petitioner also requested that the requirement that operators include procedures in their operations manuals relating to worker exposure to gas or hazardous vapors in excavated trenches (49 CFR 192.605(b)(9) and 49 CFR 195.402(c)(14)) be broadened to require operators to include procedures to address worker safety in general.

Sections 192.605(b)(9) and 195.402(c)(14) of the final rule require that gas and hazardous liquid operators include procedures in their respective O&M plans to address the following:

> Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and a rescue harness and line.

RSPA does not agree with Petitioner's argument that a requirement specifically addressing worker safety in excavated trenches will give the ''impression that this is the only worker safety provision that need be addressed in a proper O&M plan.'' While it may be the only provision in this rulemaking directly addressing worker safety, many of RSPA's rules indirectly impact worker safety.

Petitioner also argues that ''RSPA has not demonstrated that current Office of Pipeline Safety (OPS) regulations do not adequately prevent worker exposure to hazardous vapors or gas.'' RSPA has broad rulemaking authority for pipeline safety. Under this authority, RSPA may issue regulations to address specific worker safety issues as they relate to the safe and environmentally sound transportation of gas by pipeline. It is not necessary that RSPA ''demonstrate'' that current regulations are inadequate before issuing specific safety regulations.

Petitioner urges RSPA to revise the worker safety provision, stating that worker safety issues should not be addressed specifically, but instead that the issue be addressed generically. This suggestion goes beyond the scope of the NPRM and is not adopted.

RSPA disagrees with Petitioner's claim that compliance with this provision would entail enormous costs. RSPA prepared a Regulatory Evaluation which concluded that the final rule would have a positive cost/benefit ratio. Costs of complying with the final rule are small because most operators need only make emergency rescue equipment available when needed at the trench excavation. RSPA did not receive any comments to the preliminary regulatory evaluation that accompanied the NPRM and A.G.A. has not provided detailed information about increased costs. Furthermore, since most operators regularly train employees in industrial safety, and currently include operator safety as an integral part of their O&M plan, RSPA believes the costs of revising the O&M plan to include worker safety would not be increased significantly.

Accordingly, Petitioner's request to change sections 192.605(b)(9) and 195.402(c)(14) is denied.

IV. Extent of Requirement to Address Malfunctions and Other Deviations During Abnormal Operations

In its petition, A.G.A. also requested that RSPA should remove the requirement in 49 CFR 192.605(c)(1)(v) requiring that an operator address abnormal operations in its O&M manual. The rule states as follows:

(c) *Abnormal operation.* For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

* * * * *

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property.

Petitioner asserts that this language is confusing and could be interpreted to require operators to have written procedures in their O&M manual describing how to respond to unforeseeable malfunctions, deviations from normal operation, or personnel error. Petitioner requests that RSPA clarify the regulation to indicate that an operator need only include written procedures for ''foreseeable'' malfunctions when design limits have been exceeded.

The operator is required to prepare procedures when operating design limits have been exceeded, such as limits of pressure, flow, and temperature that indicate an abnormal condition which should be investigated and corrected to avoid approaching the strength limits of the system and the potential for failure. Pipeline systems vary, and an operator must be able to provide procedures to apply to the particular requirements of its system. The operator must plan for potential foreseeable causes of abnormal pipeline operations.

The identical rule for hazardous liquids, 49 CFR 195.402(d)(1)(v) has been in effect since 1979 (44 FR 41197, July 16, 1979). Regulated hazardous liquid pipeline operators have not been confused by the regulation, apparently assuming correctly that the rule only applies to foreseeable events. However, to avoid confusion, RSPA is amending the final rule to add the word ''foreseeable'' in section 192.605(c)(1)(v).

V. Extent of Requirement That Operators of Natural Gas Distribution Systems Prepare Procedures for Addressing Abnormal Operations

Petitioner asserts that the final rule should exempt natural gas distribution systems from the requirement to have procedures for addressing abnormal operations on its transmission lines as described in 49 CFR 192.605(c) of the final rule. A.G.A. contends that many small diameter and short distance pipelines ''have little similarity'' to interstate transmission systems, but are regulated as transmission lines only because they operate at above 20 percent of the pipe's specified minimum yield strength (SMYS). Petitioner stated that compliance with the regulation would require separate abnormal operations plans for each separate section of pipe.

RSPA agrees with Petitioner that natural gas transmission lines operated by distribution operators in connection with their distribution systems should be exempt from the requirement to have procedures that address abnormal operations. This was the intent of the final rule. The preamble to the final rule stated that ''[d]istribution system operators are not required to prepare a manual for abnormal conditions because they normally operate distribution pipelines at lower pressures than transmission pipelines * * * due to the dangers involved in operating in populated areas, most unusual operating conditions would be considered by the distribution system operator to be an emergency until the condition is resolved or corrected.'' (59 FR 6582; February 11, 1994.) Accordingly, RSPA is amending the final rule to clarify that an operator of a high-pressure or low-pressure distribution system, as defined in 49 CFR 192.3, is exempt from the requirement to prepare a manual for abnormal operations.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it merely clarifies the content of a final rule and does not materially affect the substance of the final rule.

Federalism Assessment

This rule will not have substantial direct effects on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule only makes minor editorial changes to a previously issued rule. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987) RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

There are very few small entities that operate pipelines affected by this rulemaking. To the extent than any small entity is affected, the affect is minimal because it does not impose additional requirements. Based on this fact, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605; September 19, 1980) that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 192 is amended to read as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.605, the introductory text of paragraph (b) is revised to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

* * * * *

3. In § 192.605, paragraph (c)(1)(v) is revised, and a new paragraph (c)(5) is added to read as follows:

§ 192.605 Procedural manual for operations, maintenance and emergencies.

* * * * *

(c) * * *

(1) * * *

(v) Any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property.

* * * * *

(5) The requirements of this paragraph (c) do not apply to natural gas distribution operators that are operating transmission lines in connection with their distribution system.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95–6363 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 280 and 285

[Docket No. 950124026–5026–01; I.D. 100893B]

RIN 0648–AF74

Bluefin Tuna Fisheries; Bluefin Tuna Statistical Document

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations governing the bluefin tuna fisheries to: Require an appropriately completed, approved Bluefin Tuna Statistical Document (BSD) as a condition for import, export, or re-export of bluefin tuna into or from the United States; require a Federal permit for all dealers that import or export Pacific bluefin tuna; require preparation and submission of a biweekly report on imports and exports of Pacific bluefin tuna by permitted dealers; revise specifications determining size classes of Atlantic bluefin tuna; and make minor amendments to clarify the regulations. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), to improve management and monitoring of the U.S. bluefin tuna fisheries, to facilitate enforcement, and to enhance collection of data in order to improve assessment of the environmental and economic impacts of the fisheries.

EFFECTIVE DATE: April 17, 1995.

ADDRESSES: Copies of the Final Environmental Assessment/ Regulatory Impact Review, are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Richard H. Schaefer and to the Office of Management and Budget (OMB), Paperwork Reduction Project (0648–0040; 0648–0148; 0648–0202; 0648–0239), Attention: NOAA Desk Officer, Washington, DC 20503.

Copies of the ICCAT BSD and revised Fisheries Certificate of Origin (FCO) are also available from the Director, F/CM.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The Pacific tuna fisheries are managed under regulations at 50 CFR part 280 implementing the recommendations of the Inter-American Tropical Tuna Commission. The AA has determined that provisions of this final rule applicable to Pacific bluefin tuna are necessary to implement the recommendations of ICCAT due to similarity of appearance to Atlantic bluefin tuna.

Purpose of Current Action

Background information about the need for the ICCAT Bluefin Statistical Tuna Document program was provided in the notice of proposed rulemaking (59 FR 30896, June 16, 1994) and is not repeated here.

Management Measures

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries:

1. Bluefin Tuna Statistical Document

This final rule requires an original completed, approved BSD as a condition for the import, export, or re-export of all bluefin tuna shipments into or from the United States. The BSD is required for all bluefin tuna products that are exported from or imported into the United States and identified by Harmonized Tariff Schedule (HTS) numbers for fresh or chilled bluefin tuna, excluding fillets and other fish meat—0302.39.00.20; frozen bluefin tuna, excluding fillets—0303.49.00.20; and any other product form not identified by bluefin-specific HTS numbers. In order to be considered appropriately completed, the approved BSD accompanying each shipment must provide all of the required information indicated at 50 CFR 285.202 and be certified by the exporter, importer, and government official, as appropriate.

2. Pacific Bluefin Dealer Permits

Dealers importing Pacific bluefin tuna, or purchasing or receiving for export Pacific bluefin tuna first landed in the United States, are required to possess a valid bluefin tuna dealer permit and comply with all applicable recordkeeping and reporting requirements.

3. Pacific Bluefin Reporting Requirements

Pacific bluefin tuna dealers are required to submit biweekly reports to the Regional Director on imports and exports of bluefin tuna. The report must be postmarked and mailed within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were imported or exported. The biweekly reporting periods are defined as the first day through the 14th day of each month and the 15th day through the last day of the month. Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import, any tag number (if so tagged), and weight in kilograms (specify if round or dressed).

4. Atlantic Tuna Curved Length Measure

The regulatory text is amended to specify Atlantic bluefin tuna size classes relative to curved length measure. The curved length measure is a more feasible measurement method to apply to a bluefin tuna on a vessel or at the dock. Specification of size classes according to the curved measurement method will enable fishermen, dealers, and NMFS enforcement agents to consistently assign individual fish to one of the regulatory size classes for the purposes of compliance with daily bag and boat limits and the prohibition on sale of small fish.

5. Atlantic Tuna Technical Amendments

Technical amendments to the regulations at 50 CFR part 285 are made to delete references to metal tags to account for non-metallic tail tags now issued to dealers, and to clarify a prohibition on the reuse of tail tags issued to permitted dealers for the purpose of identifying individual Atlantic bluefin tuna. These changes will not affect the conduct of the tuna fisheries except to facilitate enforcement. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

Comments and Responses

1. Bluefin Tuna Statistical Document

Comment: Fisheries officials from other ICCAT member nations, including Spain, Canada, and Japan, commented that combining the ICCAT BSD with the U.S. FCO (NOAA Form 370) could lead to confusion and potential problems in implementing the ICCAT bluefin tuna statistical program. This could have deleterious effects on multilateral management of bluefin tuna. These officials noted that ICCAT has invested a considerable amount of effort over several years in designing a form and an information-collection system that would be acceptable to all ICCAT members. By using a form containing information-collection requirements extraneous to the ICCAT bluefin statistical program, the United States could impede expeditious transport of a highly perishable product.

Additionally, U.S. bluefin dealers objected to the proposed combined form on the grounds that importing countries (e.g., Japan) would not accept it as the agreed ICCAT document, and dealers would have to complete both the U.S. form and the ICCAT form, resulting in unnecessary duplication of effort. Due to Japanese import requirements implemented on June 1, 1994, U.S. dealers have been using the ICCAT-style form supplied to them by Japanese importers. Many dealers commented that introduction of a new form would lead to confusion on the part of customs brokers in Japan and could possibly result in delayed or rejected shipments.

Response: NMFS concurs in general with the comments and is issuing a separate BSD according to the ICCAT format. While use of a separate BSD will avoid confusion in implementing the ICCAT program, it does not exempt U.S. dealers from complying with FCO requirements. However, due to FCO exemptions for fresh fish, there would be few situations (e.g., frozen bluefin) where foreign exporters and U.S. importers would need to complete both documents. Trade statistics indicate that only 1,400 lb (635 kg) of frozen bluefin were imported into the United States in 1993. Thus, the majority of bluefin imports would be exempt from FCO requirements and the overall reporting burden would not be significantly changed by issuing separate BSD and FCO forms.

2. Pacific Bluefin Tagging Requirements

Comment: Dealers of Pacific bluefin tuna commented that, relative to Atlantic bluefin, export shipments of Pacific bluefin generally comprise smaller fish, in greater numbers.

Tagging of individual Pacific bluefin is, therefore, cost-prohibitive and poses an extreme economic burden on West Coast fish dealers.

Response: NMFS agrees that the labor costs involved in tagging large numbers of small Pacific bluefin tuna affect competitive pricing and would reduce, or even preclude, the profitability of exports. NMFS, therefore, has withdrawn the proposed requirement to tag all Pacific bluefin tuna. However, dealers may continue to tag Pacific bluefin provided the tag numbers are recorded on the BSD and are reported to NMFS on the biweekly report. Voluntary tagging of Pacific bluefin tuna will relieve dealers of the responsibility to have documents validated by government officials or, if authorized, by non-government officials.

3. Pacific Bluefin Validation Requirements

Comment: Pacific bluefin tuna dealers have commented that NMFS can independently verify information on the BSD by cross-referencing state landings tickets and biweekly reports, thus eliminating delays in packing fish caused by waiting for government validation. Given the need for expeditious handling to export bluefin for the fresh market in Japan, dealers perceive the validation requirement as an excessive burden providing no additional benefit to the information retrieval system.

Response: NMFS agrees that biweekly reports, taken together with the completed BSDs and required supporting documentation, provide the information needed to report as specified in the ICCAT recommendation. However, the United States is bound to comply with validation requirements as specified by ICCAT. Pending future clarification by ICCAT's Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures, validation requirements by exporting countries may be subject to change. Currently, the ICCAT resolution on validation requires that imports of untagged bluefin tuna from the United States be validated. NMFS recommends that Pacific bluefin dealers tag individual fish when feasible to gain exemption from validation requirements. With this final rule, NMFS establishes procedures for non-government validation of BSDs in the event validation is necessary. Validation by authorized non-government parties will reduce the compliance burden.

4. Pacific Bluefin Reporting Requirements

Comment: The biweekly report was first developed for Atlantic bluefin tuna, and it needs to be modified if it is to reflect Pacific bluefin tuna shipping practices. Specifically, the sections to record tag numbers and individual weights should be deleted.

Response: Rather than issue a combined form for both Atlantic and Pacific bluefin tuna reports, NMFS has decided to issue a separate form modified for the specific biweekly reporting requirements of Pacific bluefin shipments.

5. Use of Metric Equivalents

Comment: The U.S. fishing industry records weights in pounds and the biweekly reports and BSDs should reflect this.

Response: Weights specified in kilograms will facilitate international trade in bluefin tuna. Specification of weights in kilograms on completed BSDs will reduce problems in reviewing and verifying information at customs offices abroad.

6. Import Requirements

Comment: According to the ICCAT recommendation, all bluefin tuna, regardless of product form, must be accompanied by a completed BSD to be eligible for lawful entry.

Response: In the final rule NMFS has amended the requirements for documentation to include bluefin tuna in any product form, not just fresh or frozen as identified by bluefin-specific HTS codes.

Comment: According to the general interpretation of the ICCAT recommendation, improperly documented bluefin would not be refused, but suspended and subject to administrative sanctions if documentation could not be produced. The proposed rule would only allow entry under bond without documentation.

Response: Due to the perishable nature of the product, the interpretation of the ICCAT recommendation is such that entry of bluefin tuna without documentation would be suspended, pending receipt of a properly completed document, or the entry would be allowed subject to administrative sanctions. Since the U.S. Customs Service now uses an automated broker interface for electronic filing of entry documents, refusal of improperly documented bluefin is impractical. Therefore, allowance for entry under bond has been eliminated and import of undocumented bluefin would, in most cases, be subject to civil penalties under NMFS and U.S. Customs Service regulations rather than seizure.

Changes From the Proposed Rule

After consideration of public comment, NMFS is issuing a separate form for use as an ICCAT BSD and will not combine the BSD with the FCO (NOAA Form 370). For copies of the ICCAT BSD and revised FCO, contact NMFS (see **ADDRESSES**). Though NMFS will not issue a combined form, U.S. tuna dealers must be aware that for import and export of tuna products, in some situations, both forms are required.

Under the Marine Mammal Protection Act and its implementing regulations, only dolphin-safe tuna may be purchased, sold, transported, or shipped in the United States after June 1, 1994 (16 U.S.C. 1417). In certain cases, imports of tuna and tuna products, except fresh tuna, form must be accompanied by an appropriately completed FCO (NOAA Form 370). The majority of bluefin tuna imports to the United States are in fresh form, for which an FCO is not required. However, an appropriately completed BSD is required for all bluefin tuna, fresh or frozen, that enters or exits the United States. Therefore, dealers should note that bluefin tuna imported in forms other than fresh product, are subject to the requirements of both the BSD and FCO.

Other changes from the proposed rule involve the tagging and validation requirements for Pacific bluefin tuna exported from the United States. After considering public comment on packaging and shipping practices for Pacific bluefin, NMFS has eliminated the proposed requirement that Pacific bluefin tuna be tagged prior to export. However, the ICCAT resolution on validation currently requires that imports of untagged Atlantic or Pacific bluefin tuna from the United States to other ICCAT-member countries be validated by government officials. NMFS recommends that Pacific bluefin tuna dealers tag individual fish when feasible, to gain exemption from validation requirements. In the event validation is necessary, NMFS has established procedures for non-government validation of BSDs to reduce the compliance burden.

NMFS has changed the requirements for dealer permits to include both dealers importing and exporting Pacific bluefin tuna. This is necessary to ensure accurate reporting of import statistics and collection of BSDs accompanying Pacific bluefin tuna that are imported into the United States for domestic

consumption. It is expected that most, if not all, dealers importing Pacific bluefin tuna will also export on occasion, and thus require a permit in any case.

NMFS has also changed the retention period for copies of BSDs and biweekly dealer reports on Pacific bluefin tuna exports from 6 months to 2 years. This was done to make the recordkeeping requirements consistent with those already in effect for Atlantic bluefin tuna reports.

NMFS has changed the requirements for lawful entry of Atlantic and Pacific bluefin tuna imports to include all product forms and to eliminate requirements for entry under bond. This is necessary to comply with general interpretations of the ICCAT recommendation and subsequent resolutions concerning the BSD.

NMFS has revised the format of certain amendments to the regulatory text in that dealer permitting, reporting and recordkeeping requirements applicable to Pacific bluefin tuna are placed at 50 CFR part 280, rather than at 50 CFR part 285. This organizational change was made to reduce fragmentation of the regulatory text applicable to Pacific tuna fisheries.

In addition to the above changes, the following adjustments to the regulations, though not part of the proposed rule, are implemented by this rule to assist in quota monitoring, to increase the effectiveness of enforcement, and to ensure the accuracy of bluefin statistical documents:

In § 285.26, size classes are defined relative only to the curved length measurement method. Public support for this change was expressed following a request for comments issued during rulemaking for the 1994 Atlantic bluefin tuna season (59 FR 2813, January 19, 1994). Landings data also support this change, since 88 percent of Atlantic bluefin tuna purchased by dealers from 1991 through 1993 were reported with curved length measures. NMFS enforcement officials concur that specification of size classes by the curved method is more consistent with the way length measurements are taken in the field and reduces confusion between legal and illegal size fish relative to the daily bag limits and the prohibition on sale of Atlantic bluefin below the large medium size class. Accordingly, this rule establishes curved measure as the sole criterion for determination of size classes of Atlantic bluefin tuna.

In § 285.29(a), language is added to instruct permitted dealers purchasing or receiving Atlantic bluefin tuna to verify, by visual inspection of the vessel permit, that the required permit information is correctly recorded on the dealer landing card. This is necessary to ensure that records of bluefin tuna landings are assigned to the correct vessel permit number.

Another technical change is that specific language is added at § 280.52, § 280.53(f), § 285.30(e), and § 285.31(a)(38) to prohibit the reuse of bluefin tuna identification tags. While instructions to dealers have indicated proper use of tags, the regulatory text was not clear regarding reuse. Clarifying the regulatory text will assist quota monitoring and ensure the accuracy of export documentation as recorded on the BSD.

Finally, all references to metal tail tags in the regulatory text have been deleted, since NMFs now issues non-metallic tail tags to dealers for the purpose of identifying individual bluefin tuna available for sale.

Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the recordkeeping and reporting requirements impose minimal costs. Accordingly, an Initial Regulatory Flexibility Analysis was not prepared. The changes from the proposed rule reduce the compliance burden on bluefin tuna dealers by eliminating mandatory tagging of Pacific bluefin and by allowing dealer associations, if authorized, to validate BSDs.

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

This rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies and renews requirements that were approved by OMB under control numbers 0648–0040, 0648–0148, 0648–0202 and 0648–0239. The public reporting burden for completing an application for a Federal permit for dealers that export or re-export Pacific bluefin tuna is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection of information on dealer reports is estimated at 0.25 hours (15 minutes) per response for the biweekly dealer reports and affixing tags, and 0.33 hours (20 minutes) per response for all bluefin tuna dealers for completing a BSD. The public reporting burden for maintaining a daily log of fishing activities for Pacific bluefin tuna is estimated at 0.10 hours (6 minutes) per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 280

Fisheries, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 280 and 285 are amended as follows:

PART 280—PACIFIC TUNA FISHERIES

1. The authority citation for part 280 is revised to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

2. A heading for subpart A is added to read as follows:

Subpart A—General

3. Sections 280.1 and 280.2 are transferred to subpart A.

4. Section 280.1 is revised to read as follows:

§ 280.1 Purpose and scope.

The regulations in this part implement the IATTC recommendations for the conservation of yellowfin tuna and the ICCAT recommendations for the conservation of bluefin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

5. In § 280.2, the definition for ''Authorized officer'' is amended by redesignating paragraphs (a) through (d) as paragraphs (1) through (4), respectively, and the definition for ''Mingled species'' is amended by redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively; the definition for ''Commission'' is removed; and the definitions of

''Atlantic bluefin tuna'', ''Bluefin tuna'', ''IATTC'', ''ICCAT'', ''Pacific bluefin tuna'', ''Regional Director'', and ''Tag'' are added in alphabetical order to read as follows:

§ 280.2 Definitions.

* * * * *

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean.

* * * * *

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

* * * * *

IATTC means the Inter-American Tropical Tuna Commission established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

ICCAT means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas.

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

Regional Director means

(1) For the purposes of Atlantic bluefin dealers, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and

(2) For the purposes of Pacific bluefin dealers, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Tag means the flexible, self-locking ribbon issued by the NMFS for the identification of bluefin tuna under § 280.52 or § 285.30 of this chapter.

* * * * *

6. A heading for subpart B is added to read as follows:

Subpart B—Yellowfin Tuna (Thunnus albacares)

7. Sections 280.3 and 280.4 are redesignated as §§ 280.10 and 280.11, respectively, and are transferred to subpart B.

8. Newly redesignated § 280.10 is revised to read as follows:

§ 280.10 Recordkeeping and written reports.

(a) The master or other person in charge of a fishing vessel or a person authorized in writing to serve as the agent for either person must keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish aboard, by species. The record and bridge log maintained at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified are accurately entered in the log.

(b) Any authorized officer has the power to inspect, without warrant or other process, at any reasonable time, the records and logs of any fishing vessel that are required by paragraph (a) of this section.

9. In newly redesignated paragraph 280.11(a), the word ''Commission'' is replaced with the word ''IATTC''.

10. A new Subpart C is added to read as follows:

Subpart C—Pacific Bluefin Tuna (Thunnus thynnus orientalis)

Subpart C—Pacific Bluefin Tuna (Thunnus thynnus orientalis)

§ 280.50 Dealer permits.

(a) *General.* A dealer importing Pacific bluefin tuna or purchasing, or receiving, for export Pacific bluefin tuna first landed in the United States, must have a valid permit issued under this section.

(b) *Application.* A dealer must apply for a permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the dealer and be submitted to the Regional Director at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner or owners' names, applicant's name (if different from owner or owners) and mailing address and telephone number, and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to the Regional Director in writing. The permit is void if any change in information is not reported within 15 days.

§ 280.51 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 280.50:

(a) Must submit to the Regional Director a biweekly report on bluefin imports and exports on forms supplied by NMFS.

(1) The report required by this paragraph (a) must be postmarked and mailed at the dealer's expense within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods are defined

as the first day to the 14th day of each month and the 15th day to the last day of the month.

(2) Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); weight in kilograms (specify if round or dressed); and any other information required by the Regional Director. At the top of each form, the company's name, license number, and the name of the person filling out the report must be specified. In addition, the beginning and ending dates of the 2-week reporting period must be specified by the dealer and noted at the top of the form.

(b) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna.

(c) Must retain at his/her principal place of business a copy of each biweekly report for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 280.52 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tags to each person receiving a dealer's permit under § 280.50.

(b) *Transfer of tags.* Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* At the discretion of dealers permitted under § 280.50, a tag issued under paragraph (a) of this section may be affixed to each Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by § 280.51(a) and any documents accompanying the shipment of Pacific bluefin tuna for domestic commercial use or export.

(d) *Removal of tags.* A NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container.

(e) *Reuse of tags.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

§ 280.53 Documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in 50 CFR part 285, subpart F of this chapter.

§ 280.54 Prohibitions.

It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Import Pacific bluefin tuna or purchase or receive for export Pacific bluefin tuna first landed in the United States without a valid dealer permit issued under § 280.50;

(b) Remove any NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter, before removal is allowed under § 280.52, or fail to write the tag number on the shipping package or container as specified in § 280.52;

(c) Falsify or fail to make, keep, maintain, or submit any reports or other record required by this subpart;

(d) Refuse to allow an authorized officer or employee of NMFS designated by the Regional Director to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Pacific bluefin tuna required of this subpart;

(e) Make any false statement, oral or written, to an authorized officer or employee of NMFS designated by the Regional Director to make inspections concerning the catching, harvesting, landing, purchase, sale, or transfer of any Pacific bluefin tuna;

(f) Reuse any NMFS-issued tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter or reuse any tag number previously written on a shipping package or container as prescribed by § 280.52.

PART 285—ATLANTIC TUNA FISHERIES

11. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

12. In § 285.2, the definition of ''Metal tag'' is removed; the definitions of ''Bluefin tuna'', ''Intermediate country'', ''Pacific bluefin tuna'', and ''Tag'' are added in alphabetical order; the definition of ''Atlantic bluefin tuna'' is revised; in the definition of ''owner'', paragraphs (a) through (c) are redesignated paragraphs (1) through (3), respectively; and in the definition of ''Regional Director'', paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), respectively, and are revised to read as follows:

§ 285.2 Definitions.

* * * * *

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean. Size classes for Atlantic bluefin tuna are defined in § 285.26.

* * * * *

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

* * * * *

Intermediate country means a country from which bluefin tuna or bluefin tuna products that were previously imported by that nation are exported to the United States. Shipments of bluefin tuna or bluefin tuna products through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

* * * * *

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

* * * * *

Regional Director means

(1) For the purposes of Atlantic bluefin dealers, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and for the purposes of Pacific bluefin dealers, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213; and

(2) For purposes of yellowfin tuna, bigeye tuna, skipjack tuna, and albacore, the Regional Director, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

* * * * *

Tag means the flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna under § 285.30.

* * * * *

13. In § 285.23, paragraph (d) is revised to read as follows:

§ 285.23 Incidental catch.

* * * * *

(d) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel issued a permit for the Angling category and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one large medium or giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant Atlantic bluefin tuna, and must make the tuna available for inspection and attachment of a tail tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes.

* * * * *

14. Section 285.26 is revised to read as follows:

§ 285.26 Size classes.

Total curved fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the snout to the fork of the tail. For any Atlantic bluefin tuna found with the head removed, it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total curved fork length equals pectoral fin curved fork length multiplied by a factor of 1.35. The pectoral fin curved fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the dorsal insertion of the pectoral fin of the beheaded fish to the fork of the tail (see Figure 1). Atlantic bluefin tuna are deemed to fall into a size class according to the following table; approximate round weights are given for illustrative purposes only.

Size category	Total curved fork length	Pectoral fin curved fork length	Approx. round weight
Young School	Less than 27 inches	Less than 20 inches	Less than 14 lb.
	Less than 69 cm	Less than 51 cm	less than 6.4 kg.
School	27 to <47 inches	20 to <35 inches	14 to <66 lb.
	69 to <119 cm	51 to <89 cm	6.4 to <30 kg.
Large School	47 to <59 inches	35 to <44 inches	66 to <135 lb.
	119 to <150 cm	89 to <112 cm	30 to <61 kg.
Small Medium	59 to <73 inches	44 to <54 inches	135 to <235 lb.
	150 to <185 cm	112 to <137 cm	61 to <107 kg.
Large Medium	73 to <81 inches	54 to <60 inches	235 to <310 lb.
	185 to <206 cm	137 to <152 cm	107 to <141 kg.
Giant	81 inches or greater	60 inches or greater	310 lb or greater.
	206 cm or greater	152 cm or greater	141 kg or greater.

15. In § 285.29, paragraphs (a) and (b)(1) are revised to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the U.S. postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508–281–9340) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. At the offloading of the fish, each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number and expiration date, tail tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin curved fork length, gear used, and area where the fish was caught. The dealer purchasing or receiving the Atlantic bluefin tuna must inspect the vessel permit and verify that the required permit information is correctly recorded on the dealer landing card.

(b) * * *

(1) Said report must be postmarked and mailed, at the dealer's expense, within 10 days after the end of each 2-week reporting period in which Atlantic bluefin tuna were purchased, received, or imported. The biweekly reporting periods are defined as the first day through the 14th day of each month and the 15th day through the last day of the month. Each report must specify accurately and completely for each tuna purchased or received: Date of landing or import, vessel Atlantic Bluefin Tuna permit number (if applicable), tail tag number, weight in pounds or kilograms (specify if round or dressed), nature of the sale (dockside or consignment), price per pound or kilogram (round or dressed weight), and destination of the fish (domestic or export). In addition, dealers may indicate the quality rating of their bluefin tuna: (A, B, or C) for four attributes (freshness, fat, color, and shape).

* * * * *

16. Section 285.30 is revised to read as follows:

§ 285.30 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tail tags to each person receiving a dealer's permit under § 285.28.

(b) Transfer of tags. Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* (1) A dealer or agent must affix a tail tag to each Atlantic bluefin tuna purchased or received, immediately upon its offloading from a vessel. The tail tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing said Atlantic bluefin tuna and make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a tail tag to it. A list of local NMFS enforcement offices can be obtained by contacting regional offices in Gloucester, MA (508–281–9261) and St. Petersburg, FL (813–570–5344). The Regional Director may designate a person other than a NMFS agent to

inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A tag affixed to any Atlantic bluefin tuna under paragraph (c)(1) of this section or under § 285.202(a)(6)(v) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

(e) *Reuse of tags.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Atlantic bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

17. In § 285.31, the word ''tranfer'' in paragraph (a)(14) is revised to read ''transfer''; the periods at the end of paragraphs (a)(10), (a)(29), and (a)(32) are replaced with semicolons; and paragraphs (a)(18), (a)(19), (a)(31), (a)(36) and (a)(37) are revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(18) Fail to inspect any vessel's permit or fail to affix immediately to any large medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered tail tag when the tuna has been received for a commercial purpose or purchased by that dealer from any person or vessel having caught such tuna;

(19) Remove any tag affixed to an Atlantic bluefin tuna under § 285.30(c)(1) or under § 285.202(a)(6)(v), before removal is allowed under § 285.30(d), or fail to write the tag number on the shipping package or container as prescribed by that section;

* * * * *

(31) Fish for, catch, retain, possess or land Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.22, 285.23, and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

* * * * *

(36) Reuse any tail tag previously affixed to an Atlantic bluefin tuna under § 285.30 or reuse any tail tag number previously written on a shipping package or container as prescribed by that section; or

(37) Fish for, catch, retain, possess or land any Atlantic bluefin tuna less than 185 cm (73 inches) total curved fork length from a vessel other than one issued an Angling Category permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(e).

18. A new subpart F is added to part 285 to read as follows:

Subpart F—Bluefin Tuna Statistical Documentation

Subpart F—Bluefin Tuna Statistical Documentation

§ 285.200 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all bluefin tuna or bluefin tuna products regardless of ocean area of catch are subject to the documentation requirements of this subpart.

(a) Documentation is required for bluefin tuna identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen bluefin tuna, excluding fillets, No. 0303.49.00.20.

(b) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (i.e., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

§ 285.201 Documentation requirements.

(a) *Bluefin imports.* (1) Imports of all bluefin tuna products into the United States must be accompanied at the time of entry by an original completed approved Bluefin Tuna Statistical Document with the information and exporter's certification specified in § 285.202(a)(1) through (7). Such information must be validated as specified in § 285.202(a)(8) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed), unless the Assistant Administrator has waived validation requirements for the country pursuant to § 285.203.

(2) Bluefin tuna imported into the United States from a country requiring a tag on all such tuna available for sale must be accompanied by the appropriate tag issued by that country, and said tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or export, the tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) Dealers selling bluefin tuna that was previously imported into the United States for domestic commercial use must provide on the original Bluefin Tuna Statistical Document that accompanied the import shipment the correct information and importer's certification specified in § 285.202(a)(9). The original of the completed Bluefin Tuna Statistical Document must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was imported into the United States.

(b) *Bluefin exports.* (1) Dealers exporting bluefin tuna that was harvested by U.S. vessels and first landed in the United States must complete an original numbered Bluefin Tuna Statistical Document issued to that dealer by the Regional Director. Such an individually numbered document is not transferable or reusable and may be used only once by the dealer to which it was issued to report on a specific export shipment. Dealers must provide on the Bluefin Tuna Statistical Document the correct information and exporter certification specified in § 285.202(a)(1) through (7). As required under § 285.203, the Bluefin Tuna Statistical Document must be validated as specified in § 285.202(a)(8) by an official of the U.S. Government or, if authorized by NMFS, an official of an accredited institution. A list of such officials may be obtained by contacting the Office of Fisheries Conservation and Management, NMFS, Silver Spring, MD (301–713–2347), or the nearest NMFS Enforcement Office. A list of local NMFS enforcement offices can be obtained by contacting regional offices in Gloucester, MA (508–281–9261), St. Petersburg, FL (813–570–5344) and Long Beach, CA (310–980–4050). Dealers requesting government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) Dealers re-exporting bluefin tuna that was previously imported into the United States must provide on the

original Bluefin Tuna Statistical Document that accompanied the import shipment the correct information and intermediate importer's certification specified in § 285.202(a)(9).

(3) Dealers must submit the original of the completed Bluefin Tuna Statistical Document to accompany the shipment of bluefin tuna to its export or re-export destination. A copy of the Bluefin Tuna Statistical Document completed as specified under paragraph (b)(1) or (2) of this section must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* Dealers must retain at their principal place of business a copy of each Bluefin Tuna Statistical Document required to be submitted to the Regional Director pursuant to this section for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 285.202 Contents of documentation.

(a) A Bluefin Tuna Statistical Document, to be deemed complete, must:

(1) Have a document number assigned as prescribed by the country issuing the document;

(2) State the name of the country issuing the document, which is the country whose flag vessel harvested the bluefin tuna, regardless of where the tuna is first landed;

(3) State the name of the vessel that caught the fish and the vessel's registration number, if applicable;

(4) State the name of the owner of the trap that caught the fish, if applicable;

(5) State the point of export, which is the city, state or province, and country from which the bluefin tuna is first exported;

(6) State the following specified information about the shipment:

(i) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet or other);

(ii) The method of fishing used to harvest the fish (purse seine, trap, rod and reel, etc.);

(iii) The ocean area from which the fish was harvested (western Atlantic, eastern Atlantic, Mediterranean, or Pacific);

(iv) The weight of each fish (in kilograms for the same product form previously specified);

(v) The identifying tag number, if landed by vessels from countries with tagging programs;

(7) State the name and license number of, and be signed and dated in the exporter's certification block by, the exporter;

(8) If applicable, state the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the Bluefin Tuna Statistical Document; and

(9) As applicable, state the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) An approved Bluefin Tuna Statistical Document may be obtained from the Regional Director to accompany exports of bluefin tuna from the United States. Bluefin tuna dealers in countries that do not provide an approved Bluefin Tuna Statistical Document to exporters may obtain an approved Bluefin Tuna Statistical Document from the Regional Director to accompany exports to the United States.

(c) Dealers from a country exporting bluefin tuna to the United States may use the approved Bluefin Tuna Statistical Document obtainable from the Regional Director or documents developed by the dealer's country, if that country submits a copy, through the ICCAT Executive Secretariat, to the Assistant Administrator, and the Assistant Administrator concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, the Assistant Administrator shall provide a list of countries for which Bluefin Tuna Statistical Documents are approved, together with examples of such documents to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of bluefin tuna or bluefin tuna products offered for importation from said country(ies) may be accompanied by either that country's approved Bluefin Tuna Statistical Document or by the Bluefin Tuna Statistical Document provided to the foreign country exporter by the Regional Director.

§ 285.203 Validation requirements.

(a) *Imports.* The approved Bluefin Tuna Statistical Document accompanying any import of bluefin tuna, whether or not the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless the Assistant Administrator waives the government validation requirement for that country following a recommendation to do so by the Executive Secretary of ICCAT. The Assistant Administrator shall furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Said list shall indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate Bluefin Statistical Documents for that country.

(b) *Exports.* The approved Bluefin Tuna Statistical Document accompanying any export of bluefin tuna from the United States must be validated by a U.S. government official, except under circumstances of waiver, if any, specified on the form and accompanying instructions, or in a letter to permitted dealers from the Regional Director. Such circumstances of waiver of government validation shall be consistent with ICCAT recommendations concerning validation of Bluefin Tuna Statistical Documents. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual tags affixed pursuant to § 280.52 or § 285.30 of this chapter, or;

(2) Validation by non-government officials authorized to do so by the Regional Director under paragraph (c) of this section.

(c) *Authorization for non-government validation.* Institutions, or associations seeking authorization to validate Bluefin Tuna Statistical Documents accompanying exports from the United States, must apply in writing to the Regional Director. A letter of application must indicate the procedures to be used for verification of information to be validated, must list the names, addresses, and telephone/fax numbers of individuals to perform validation, and must provide an example of the stamp or seal to be applied to the Bluefin Tuna Statistical Document. Upon finding the institution or association capable of verifying the information required on the Bluefin Tuna Statistical Document, the Regional Director will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate Bluefin Tuna Statistical Documents accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for the Assistant Administrator to notify the ICCAT

Secretariat of non-government institutions and associations authorized to validate Bluefin Tuna Statistical Documents.

§ 285.204 Ports of entry.

The Assistant Administrator shall monitor the importation of bluefin tuna into the United States. If the Assistant Administrator determines that the diversity of handling practices at certain ports at which bluefin tuna is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna may be imported into the United States. The Assistant Administrator shall announce in the **Federal Register** the names of ports so designated and the effective dates of entry restrictions.

§ 285.205 Prohibitions.

It is unlawful for any person to do any of the following:

(a) Import or attempt to import any bluefin tuna into the United States without an accompanying original form of an approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification and government validation.

(b) Import any bluefin tuna into the United States from a country that requires all such tuna to be tagged, without said tag accompanying the bluefin tuna.

(c) Remove a tag from any bluefin tuna imported into the United States accompanied by a tag, prior to its being cut into portions for a destination in the United States or for export.

(d) Fail to write legibly and indelibly the tag number and the issuing country on the outside of any package containing a part or parts of a bluefin tuna that was imported into the United States accompanied by said tag.

(e) Export or re-export from the United States any bluefin tuna without an accompanying original approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification and, if applicable, validated by a designated official of the United States government or an official of an institution authorized by the Regional Director pursuant to § 285.203(c) to validate such documents.

(f) Fail to provide in a timely manner any originals or copies of Bluefin Tuna Statistical Documents required to be submitted to the Regional Director pursuant to § 285.201.

(g) Write false information on or modify any information previously written on any Bluefin Tuna Statistical Document required by this subpart or to validate such document if not authorized to do so by the Regional Director.

(h) Fail to maintain copies of completed Bluefin Tuna Statistical Documents as required under § 285.201.

(i) Import any bluefin tuna in a manner inconsistent with any ports of entry designated by the Assistant Administrator pursuant to § 285.204.

(j) Reuse, or transfer to another dealer, any numbered Bluefin Tuna Statistical Document issued to a dealer under this subpart.

[FR Doc. 95–6454 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 031095E]

Groundfish of the Gulf of Alaska; Pacific Cod in the Central Regulatory Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the offshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 13, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the offshore component in the Central Regulatory Area was established by the final groundfish specifications (60 FR 8470, February 14, 1995), as 4,565 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the offshore component in the Central Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 3,565 mt, with consideration that 1,000 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: March 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6549 Filed 3–13–95; 4:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 031095F]

Groundfish of the Bering Sea and Aleutian Islands Area; Offshore Component Pollock in the Aleutian Islands Subarea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the ''A'' season allowance of pollock for the offshore component in the Aleutian Islands subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 13, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the AI was established by the final 1995 initial groundfish specifications (60 FR 8479, February 14, 1995) as 31,272 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 29,272 mt after determining that 2,000 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: March 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6548 Filed 3–13–95; 4:33 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 52
Friday, March 17, 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

9 CFR Parts 101 and 112

[Docket No. 93–167–1]

Viruses, Serums, and Toxins and Analogous Products; Master Labels

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the packaging and labeling of veterinary biologicals to require the use of a master label. The use of a master label system would: reduce the number of copies of labels that are required to be submitted for review and approval, and allow labels with certain minor revisions to be used sooner than would be possible without the use of a master label. A definition of ''master label'' would be added to the regulations. The proposed amendments are necessary in order to improve label approval procedures by establishing a master label system. The effect of the proposed amendment would be to streamline the procedure for requesting and receiving approval to use new or revised labels for veterinary biologicals.

DATES: Consideration will be given only to comments received on or before May 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–167–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 93–167–1. 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 (202) 690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Veterinary Biologics, 4700 River Road Unit 148, Riverdale, MD 20737–1228, telephone number (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations pertaining to the packaging and labeling of veterinary biologicals are in 9 CFR part 112. The regulations require that all labels for veterinary biologicals be submitted and reviewed for compliance with the regulations and approved in writing prior to use. APHIS has issued licenses under the Virus-Serum-Toxin Act (21 U.S.C. 151–159) for some 2000 veterinary biological products. Each licensed biological product is required to have approved packaging and labeling applicable to a variety of container sizes, trade names, producers, subsidiaries, and distributors.

Current regulations require each product label to be reviewed and approved individually prior to use. Several nearly identical labels for one product are often required to be reviewed and approved by APHIS. A minor revision in the labeling of a product can result in the additional review and approval of all revised labels for that product.

Due to the large number of label submissions and the requirement for label review prior to the marketing of a biological product, an inordinate amount of program time and resources may be expended in the review and approval of label submissions. Many label submissions constitute only minor revisions.

An analysis of the time and resources currently required to review, file, and store label submissions involving minor revisions, and the accompanying delay experienced by some manufacturers in receiving approval and written notification suggest that the process by which labels are approved may be simplified. We propose to institute the use of a master label system that would reduce redundant review and approval of submissions involving only minor revisions of approved labels. Under the proposed master label system, only the container and carton label for the smallest size final container that is approved by APHIS and any insert for the product would be required to be submitted for review, approval, and filing as master labels. Certain specified revisions could be made on labels under the Master Label system without prior written approval, provided that such revisions are submitted to APHIS for review, approval, and filing within 60 days of use of the revised label.

We are proposing to amend the definition in § 101.4 by adding a new paragraph (h) as follows:

(h) *Master label.* The finished carton, container, or enclosure label for the smallest size final container that is authorized for a biological product, that serves as the master template label applicable to all other size containers or cartons of the same product that is marketed by a licensee, subsidiary, division, or distributor.

We are also proposing to revise several paragraphs of the regulations in § 112.5 pertaining to the review and approval of labels to add specific provisions related to the use of master labels (*see* introductory paragraph, paragraphs (d)(1)(ii), (d)(1)(iv), (d)(3)(ii)(*a*), (d)(4), and (g)).

Certain revised labels could be used on products with approved master labels prior to review and approval by APHIS as provided under proposed paragraph (c) of § 112.5.

Two copies of master label sketches would be submitted for each enclosure and the labels for the smallest approved size of carton and container. A master label sketch would be held on file for one year, or as long as a license application was active.

For finished master labels, three copies of each enclosure and of each label for the smallest size carton and final container would be submitted. Labels for larger size containers or cartons of the same product would not be submitted, provided that the larger size container or carton is approved in the Outline of Production and the larger size container or carton is identified on the label mounting sheet. When the master label enclosure is used with more than one product, an extra copy of the enclosure for each additional product would have to be submitted. Finally, the information that must be submitted on the lower left hand corner of each page of the label submission

would include the reason for the submission, a reference to the master label, its replacement, and the dose sizes for which the master label is to be used.

We are proposing to add a provision in § 112.5(c) to allow for specified minor label changes without prior approval by APHIS for products with approved master labels. Minor label changes that would be allowed include changes in physical dimensions of the label or the color of the label print that do not affect legibility; the addition, deletion, or change of a trademark or registered symbol, label control number or bar code, or logo; and the correction of typographical errors. Such minor changes would, of course, not be appropriate if they cause the label to be false or misleading. In addition, there would be a requirement that a new master label bearing such minor changes be submitted to APHIS for review and written approval within 60 days of label use.

We are also proposing to revise § 112.5(d)(2)(iii)(*a*) to add a provision for the labeling of individual reagent containers included with diagnostic test kits. Such labeling of individual reagent containers would be mounted together on a single sheet of paper, when possible. Carton labels and enclosures would be mounted on separate individual sheets.

Finally, we are proposing to add a provision in § 112.5(g) that provides for inspection of labels and master labels by authorized inspectors.

We would also correct the references in § 112.7, paragraph (c)(2), by changing ''§ 113.129'' to read ''§ 113.209'' and in paragraph (d)(6) by changing ''§ 113.147'' to read ''§ 113.312''. In addition, in § 112.5(d), paragraph (2)(iii)(*b*) would be redesignated paragraph (2)(iii)(B), paragraph (3)(i)(*a*) would be redesignated paragraph (3)(i)(A), paragraph (3)(i)(*b*) would be redesignated paragraph (3)(i)(B), and paragraph (3)(ii)(*b*) would be redesignated paragraph (3)(ii)(B).

This proposed amendment was developed through the cooperative efforts of the manufacturers of veterinary biologicals, the Animal Health Institute, and APHIS. The overall effect of this regulation would be to simplify the process whereby labels are approved by reducing the number of copies of labels needed to be submitted for review.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

The proposed rule would amend the regulations for the review and approval of biological product labels by providing for a master label system. The current regulations in part 112 require the submission and approval of all labels for each biological product to be marketed. The approval of a prototype master label for each product would reduce the need for licensees producing veterinary biologicals to submit for approval additional copies of labels for each product.

The approval of a master label would apply to labels for larger containers sizes of the same product, provided that the labels are identical to the master label, except for physical dimensions, and provided that additional container sizes are authorized in a filed Outline of Production.

This proposed rule would also allow certain approved labels with specified minor revisions to be used without prior written approval with the provision that new master labels be submitted to APHIS for review and approval within 60 days use of the revised label.

The proposed rule has its major effect in reducing the number of copies of labels that need to be submitted and reviewed. Most products are marketed in two or three different size containers. Currently, each label for each container must be submitted for approval. Under the proposed master label concept, only labels for the smallest size container would need to be submitted, thus reducing by two to three fold the number of labels that would need to be submitted by manufacturers and processed by APHIS.

The proposed rule would not have any adverse economic impact, since the submission of product labels for approval is already required under § 112.5 of the regulations, which currently specifies that all labels shall be reviewed and approved prior to use. The proposed amendments would simplify the process of label approvals and would reduce the time and expense necessary to get a product to market in the case of certain minor revisions of labels.

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 in conflict 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

The proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

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

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 112

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 and 112 would be amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.4 would be amended by adding a new paragraph (h) to read as follows:

§ 101.4 Labeling terminology.

* * * * *

(h) *Master label.* The finished carton, container, or enclosure label for the smallest size final container that is authorized for a biological product, that serves as the Master template label applicable to all other size containers or cartons of the same product that is marketed by a licensee, subsidiary, division, or distributor.

PART 112—PACKAGING AND LABELING

3. The authority citation for part 112 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 112.5 would be amended as follows:

a. The introductory paragraph would be revised to read as set forth below.

b. Paragraph (c) would be revised to read as set forth below.

c. Paragraphs (d)(1)(i) and (d)(1)(ii) would be revised to read as set forth below.

d. Paragraphs (d)(1)(iii) and (d)(1)(iv) would be added to read as set forth below.

e. Paragraph (d)(2)(iii)(*a*) would be revised to read as set forth below.

f. Paragraph (d)(3)(ii)(*a*) would be revised to read as set forth below.

g. Paragraph (d)(4) would be revised to read as set forth below.

h. Paragraph (g) would be added to read as set forth below.

i. In § 112.5, paragraph (d)(2)(iii)(*b*) would be redesignated paragraph (d)(2)(iii)(B), paragraph (d)(3)(i)(*a*) would be redesignated paragraph (d)(3)(i)(A), paragraph (d)(3)(i)(*b*) would be redesignated paragraph (d)(3)(i)(B), and paragraph (d)(3)(ii)(*b*) would be redesignated paragraph (d)(3)(ii)(B).

§ 112.5 Review and approval of labeling.

Labels used with biological products prepared at licensed establishments or imported for general distribution and sale must be submitted to the Animal and Plant Health Inspection Service for review for compliance with the regulations and approval in writing prior to use, except under the master label system as provided in paragraph (c) of this section.

* * * * *

(c)(1) Labels must be submitted to the Animal and Plant Health Inspection Service for review and written approval. Only labels which are approved as provided in § 112.5 (d) may be used. When changes are made in approved labels, the new labels shall be subject to review and approval before use: *Provided,* That certain minor changes may be made in labels for products with approved master labels, and the revised labels, may be used prior to review by APHIS, with the provision that a new master label bearing these changes is submitted to APHIS for review and written approval within 60 days of label use, and that such minor changes do not render the product mislabeled or the label false and misleading in any particular.

(2) Minor label changes that may be made under the provision for products with approved master labels are:

(i) Changes in the physical dimensions of the label provided that such change does not affect the legibility of the label;

(ii) Change in the color of label print, provided that such change does not affect the legibility of the label;

(iii) The addition or deletion of a Trade Mark (TM) or Registered (R) symbol;

(iv) The correction of typographical errors;

(v) Adding or changing label control numbers or bar codes; and

(vi) Revising or updating logos.

* * * * *

(d) (1)* * *

(i) For label sketches, submit two copies of each sketch of a final container label, carton label, and enclosure. Sketches must be legible, and must include all information specified in § 112.2. One copy of each sketch will be returned with applicable comments, and one copy will be held on file by APHIS for no more than one year after processing, until replaced by a finished label: *Provided,* That sketches submitted in support of an application for a license or permit shall be held as long as the application is considered active.

(ii) For master label sketches, submit for each product two copies of each sketch of an enclosure, label for the smallest size final container, and carton label: *Provided,* That labels for larger size containers and/or cartons that are identical, except for physical dimensions, need not be submitted. One copy of each master label sketch will be returned with applicable comments, and one copy will be held on file by APHIS for one year after processing, until replaced by a finished master label that is submitted according to § 112.5(d)(1)(iii): *Provided,* That master label sketches submitted in support of an application for license or permit shall be held as long as the application is considered active.

(iii) For finished labels, submit three copies of each finished final container label, carton label, and enclosure: *Provided,* That when an enclosure is to be used with more than one product, one extra copy shall be submitted for each additional product. Two copies of each finished label will be retained by APHIS. One copy will be stamped and returned to the licensee. Labels to which exceptions are taken shall be marked as sketches and handled under § 112.5(d)(1)(i).

(iv) For finished master labels, submit for each product three copies each of the enclosure and the labels for the smallest size final container and carton. Labels for larger sizes of containers or cartons of the same product that are identical, except for physical dimensions, need not be submitted. Such labels become eligible for use, concurrent with the approval of the appropriate finished master label: *Provided,* That the marketing of larger sizes of final containers is approved in the filed Outline of Production, and the appropriate larger sizes of containers or cartons are identified on the label mounting sheet. When a master label enclosure is to be used with more than one product, one extra copy of each additional product shall be submitted. Two copies of each finished master label will be retained by APHIS. One copy will be stamped and returned to the licensee. Master labels to which exceptions are taken will be marked as sketches and handled under § 112.5(d)(1)(ii).

* * * * *

(2) * * *

(iii)(A) When two final containers are packaged together in a combination package, the labels for each shall be mounted on the same sheet of paper and shall be treated as one label. For diagnostic test kits, the labels for use on the individual reagent containers to be included in the kit shall be mounted together on a single sheet of paper, if possible; if necessary, a second sheet of paper may be used. The carton label and enclosure shall be mounted on separate individual sheets.

* * * * *

(3) * * *

(ii)(A) Designation of the specimen as a label or master label: sketch, final container label, carton label, or enclosure.

(B) If two final container labels or multiple parts are on one sheet, each shall be named, and the label or part being revised shall be designated.

(iii) Size of package (dose, ml., cc., or units) for which the labels or enclosures are to be used.

(4) To appear on the bottom of each page: The reason for and information relevant to the submission shall be stated in the lower left hand corner as:

(i) Master label dose sizes approved for code _____.

(ii) Replacement for label, master label, and/or sketch No. _____.

(iii) Reference to label or master label No. _____.

(iv) Addition to label No. _____.

(v) License Application Pending _____.

(vi) Foreign Language copy of label No._____.

* * * * *

(g) At the time of an inspection, or when requested by APHIS, licensees or permittees shall make all labels and master labels, including labels approved for use but exempted from filing under the master label system, available for review by authorized inspectors. Such labels shall be identical to the approved label or master label except for physical dimensions, reference to recoverable volume or doses and/or certain minor differences permitted in accordance with § 112.5(c).

5. In § 112.7, paragraphs (c)(2) and (d)(6) would be revised as follows:

§ 112.7 Special additional requirements.

* * * * *

(c) * * *

(2) Subsequent revaccination as determined from the results of duration of immunity studies conducted as prescribed in § 113.209, paragraphs (b) or (c), or both.

* * * * *

(d) * * *

(6) Subsequent revaccination as determined from the results of duration of immunity studies conducted as prescribed in § 113.312, paragraphs (b) or (c), or both.

* * * * *

Done in Washington, DC, this 13 day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6650 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–02–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require repetitive checks to detect backlash in the elevator mechanical control system, and various follow-on actions. The proposed AD would also provide for an optional terminating action for the repetitive check requirements. This proposal is prompted by a report indicating that corrosion was found on the pivot bolts and bushings of the backlash remover lever mechanism on the elevator booster control unit (BCU) of a Model F28 Mark 0100 series airplane. The actions specified by the proposed AD are intended to prevent such corrosion, which could result in backlash in the elevator controls and reduced elevator control authority in the manual mode.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–02–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–02–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–02–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0100 series airplanes equipped with a certain Menasco Aerospace Elevator Booster Control Unit (BCU). The RLD advises that corrosion was found on the pivot bolts and bushings of the backlash remover lever mechanism on the elevator BCU of Model F28 Mark 0100 series airplanes. This mechanism prevents backlash in the elevator control forces when the elevator BCU is not hydraulically powered, providing the pilot with full manual control of the elevator system. Investigation revealed that corrosion on the pivot bolts and bushings causes the backlash remover mechanism to stick, which results in deteriorated elevator control when the BCU is in manual mode. This condition, if not corrected, could result in backlash in the elevator controls and reduced elevator control authority in the manual mode.

Fokker has issued Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994, which describes procedures for:

1. Performing repetitive operational checks to detect backlash in the elevator mechanical control system;

2. Performing an inspection to determine whether certain elevator BCU bolts rotate and slide freely, and to detect corrosion on the bolts of the backlash remover lever mechanism, if any backlash is detected; and

3. Replacing the elevator BCU or bolts with a serviceable part, if any anomaly is detected.

The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–051/3 (A), dated April 29, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Additionally, Fokker has issued Service Bulletin SBF100–27–061, dated March 2, 1994, which provides instructions for accomplishing an optional modification of the affected elevator BCU, which would eliminate the need for the repetitive operational checks. This modification involves replacing two bolts in the elevator BCU with new bolts.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive operational checks to detect backlash in the elevator mechanical control system. The proposed AD would also require performing an inspection to determine whether certain elevator BCU bolts rotate and slide freely, and to detect corrosion on the bolts of the backlash remover lever mechanism, if any backlash is detected; and replacing the elevator BCU or bolts with a serviceable part, if any anomaly is detected. Additionally, the proposed AD would provide for an optional modification of certain elevator BCU's; or replacement of a certain elevator BCU with a unit having a certain serial number, which would constitute terminating action for the repetitive operational check requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously. The proposed AD would also require performing appropriate trouble-shooting procedures, if no anomalies are detected in accordance with the Airplane Maintenance Manual.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 112 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,720, or $60 per airplane.

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

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–02–AD.

Applicability: Model F28 Mark 0100 series airplanes; equipped with Menasco Aerospace Elevator Booster Control Unit (BCU) having part number (P/N) 23400–3 or P/N 23400–5 with serial numbers MC–001 through MC–288 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent backlash in the elevator controls and reduced elevator control authority in the manual mode, accomplish the following:

(a) Within 500 flight cycles or 60 days after the effective date of this AD, whichever occurs first, perform an operational check to detect backlash in the elevator mechanical control system, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994. Repeat the check thereafter at intervals not to exceed 500 flight cycles or 60 days, whichever occurs first.

(b) If any backlash is detected during any operational check required by paragraph (a) of this AD, prior to further flight, perform an inspection to determine whether the elevator BCU bolts, having part numbers NAS6204C22D and P/N NAS6204C13D, rotate and slide freely, and to detect corrosion on the bolts of the backlash remover lever mechanism; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994.

(1) If no anomalies are detected, prior to further flight, perform appropriate trouble-shooting procedures in accordance with the Airplane Maintenance Manual.

(2) If any anomaly is detected, prior to further flight, replace the elevator BCU or bolts, as applicable, with serviceable parts, in accordance with the service bulletin.

(c) Modification of the affected elevator BCU having P/N 23400–3 or –5, in accordance with Fokker Service Bulletin SBF100–27–061, dated March 2, 1994; or replacement of any affected elevator BCU having P/N 23400–3 or –5 with a unit having

a serial number other than MC–001 through MC–288 inclusive, in accordance with the Airplane Maintenance Manual; constitutes terminating action for the repetitive check requirements of this AD.

(d) As of the effective date of this AD, no person shall install Menasco Aerospace Elevator Booster Control Unit (BCU) having part number (P/N) 23400–3 or P/N 23400–5 with serial numbers MC–001 through MC–288 inclusive on any airplane.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on March 13, 1995.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6632 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWA–5]

Proposed Modification of the Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, Pope AFB, NC, and Providence Theodore Francis Green State, RI, Class C Airspace Areas and Proposed Establishment of the Pensacola Regional, FL, and Providence Theodore Francis Green State, RI, Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class C airspace areas at Pensacola Regional, FL, Lexington, Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This proposed action would modify the Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, and Pope AFB, NC, airspace designations to reflect continuous operation and availability of services, therein. The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas would be amended to coincide with the associated radar approach control facility' hours of operation. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this action proposes to establish Class E airspace at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports when the associated radar approach control facility is not in operation.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 95–AWA–5, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped, postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWA–5.'' The postcard will be date/ time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Pensacola Regional, FL, Lexington, Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This proposed action would modify the Lexington, Blue Grass, KY, Fayetteville Regional/ Grannis Field, NC, and Pope AFB, NC, airspace designation to reflect continuous operation and availability of services, therein. The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas would be amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational ATCT serviced by a radar approach control facility. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this notice proposes to establish Class E airspace at

Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports when the associated radar approach control facility is not in operation. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class C and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASO FL C Pensacola Regional Airport, FL (Revised)

Pensacola Regional Airport, FL
(lat. 30°28′24″ N., long. 87°11′15″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pensacola Regional Airport, and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Pensacola Regional Airport, excluding that airspace within the 5-mile circle of the Pensacola NAS, FL, Class C airspace area. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO KY C Lexington, Blue Grass Airport, KY (Revised)

Lexington, Blue Grass Airport, KY
(lat. 38°02′13″ N., long. 84°36′20″ W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Blue Grass Airport; and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the airport.

* * * * *

ASO NC C Fayetteville Regional/Grannis Field, NC, (Revised)

Fayetteville Regional/Grannis Field, NC
(lat. 34°59′30″ N., long. 78°52′48″ W.)
Gray's Creek Airport
(lat. 34°53′04″ N., long. 78°50′08″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Fayetteville Regional/Grannis Field excluding that airspace below 1,400 feet MSL within a 1.5-mile radius of Gray's Creek Airport; and that airspace within a 10-mile radius of the airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active.

* * * * *

ASO NC C Pope AFB, NC (Revised)

Pope AFB, NC
(lat. 35°10′16″ N., long. 79°00′52″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB, excluding that airspace below 1,400 feet MSL contained in the Simmons Army Air Field, NC, Class D airspace area, and excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active; and that airspace within a 10-mile radius of Pope AFB extending upward from 2,000 feet MSL to and including 4,200 feet MSL, beginning at the northern boundaries of R–5311A, B and C clockwise to the 020° bearing from the airport; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport beginning at the 020° bearing from the airport clockwise to the northern boundaries of R–5311A, B and C, excluding that airspace contained in R–5311A, B and C when they are active and excluding that airspace contained in the Fayetteville Regional/Grannis Field Airport, NC, Class C airspace area.

* * * * *

ANE RI C Providence, Theodore Francis Green State Airport, RI (Revised)

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43′30″ N., long. 71°25′40″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Theodore Francis Green State Airport and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 195° bearing from the airport, and that airspace extending upward from 1,700 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 195° bearing from the airport clockwise to the 015° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002–Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO FL E2 Pensacola Regional Airport, FL (New)

Pensacola Regional Airport, FL
(lat. 30°28′24″ N., long. 87°11′15″ W.)

Within a 5-mile radius of the Pensacola Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE RI E2 Providence, Theodore Francis Green State Airport, RI (New)

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43′30″ N., long. 71°25′40″ W.)

Within a 5-mile radius of the Theodore Francis Green State Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on March 13, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–6689 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Arkansas permanent regulatory program (hereinafter, the ''Arkansas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional revisions pertain to statutory revisions concerning the definitions of ''unanticipated event or condition'' and ''lands eligible for remining.'' The amendment is intended to revise the Arkansas program to be consistent with SMCRA.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.s.t. April 3, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581–7927.

Arkansas Department of Pollution Control and Ecology, P.O. Box 8913, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone: (501) 562–6533.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATIOIN:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas's program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated August 26, 1994, Arkansas submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. AR–522). Arkansas submitted the proposed amendment at its own initiative with the intent of making its coal mining statutes consistent with SMCRA. Arkansas proposed to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 at (1) section 5, jurisdiction and powers for rules and regulations (2) section 13, surface coal mining permits, and (3) section 15, environmental protection performance standards.

OSM published a notice in the September 29, 1994, **Federal Register** (59 FR 49616) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. AR–526). The public comment period ended October 31, 1994.

During its review of the amendment, OSM identified concerns relating to Arkansas Code Annotated (ACA) sections 13(k), regarding remining permit violations, and 15(d)(1), regarding revegetation performance standards on lands eligible for remining. OSM notified Arkansas of the concerns by letter dated November 22, 1994 (administrative record No. AR–539). Arkansas responded in a letter dated March 1, 1995, by submitting a revised amendment package (administrative record No. AR–540).

In the revised amendment, Arkansas proposes to add the definition ''unanticipated event or condition'' at section 4(18) to mean ''an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit'' and to add the definition ''lands eligible for remining'' at section 4(19) to mean ''those lands that would otherwise be eligible for expenditures under Section 6'' of the ACA regarding lands eligible under the State abandoned mine reclamations program.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

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

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

V. List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 9, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–6590 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

[OH–231; Amendment Number 68R]

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. This revised amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning contemporaneous reclamation.

Specifically, the amendment proposes to revise Ohio's definition of ''auger mining'' and to further revise Ohio's proposed time and distance schedules for backfilling and grading in conjunction with various mining methods.

This document sets forth the times and locations that the Ohio programs and the proposed amendments to those programs will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m. [e.s.t.], on April 3, 1995. If requested, a public hearing on the proposed amendments will be held at 1 p.m. [e.s.t.], on March 27, 1995. Requests to present oral testimony at the hearing must be received on or before 4 p.m. [e.s.t.], on March 24, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below. Copies of the Ohio programs, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio programs. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio programs, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 68 (PA 68) by letter dated May 17, 1994 (Administrative Record No. OH–2018). In this amendment, Ohio proposed to revise three rules in the Ohio Administrative Code (OAC) to make the Ohio program as effective as the corresponding Federal regulations concerning contemporaneous reclamation. As part of and in support of proposed PA 68, Ohio also submitted a draft Policy/Procedure Directive (PPD) which provided additional clarification and guidance on the proposed Ohio rule requirements for contemporaneous reclamation.

OSM announced receipt of PA 68 in the May 26, 1994, **Federal Register** (59 FR 27253), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 27, 1994.

OSM and Ohio staff met on August 22, 1994, to discuss OSM's questions and concerns about PA 68 (Administrative Record No. OH–2093). In response to OSM's August 22, 1994, questions and comments, Ohio provided Revised Program Amendment Number 68 (PA 68R) by letter dated March 1, 1995 (Administrative Record No. OH–2094).

In PA 68R, Ohio is proposing a number of editorial changes to improve the clarity and readability of the rule changes and the PPD previously proposed by Ohio in PA 68. These additional changes do not affect the content of the previously proposed revisions and are not individually discussed in this proposed rule document.

The substantive changes proposed by Ohio in PA 68R are described briefly below:

(1) *OAC section 1501:13–1–02 paragraph (K):* Ohio is revising the definition of ''auger mining'' to mean drilling holes or cutting into an exposed coal seam at a highwall and transporting the coal to the surface along an auger bit, by conveyor, or by other means.

(2) *OAC section 1501:13–4–05 paragraph (A)(2)(a)(i):* Ohio is further revising this new paragraph to require that permit applications identify the mining method as area mining, contour mining, another named mining method, or a combination of methods to be identified by name.

(3) *OAC section 1501:13–4–05 paragraph (A)(2)(a)(ii):* Ohio is further revising this new paragraph to clarify that the description of the mining operation in the permit application shall include the location where the mining will begin.

III. Public Comment Procedures

Written Comments

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio programs.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. [e.s.t.], on March 24, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

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

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–6592 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

[OH–233; Amendment Number 69R]

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. This revised amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning filing of financial interest statements, acceptance of gifts and gratuities, and appeal procedures for

remedial actions regarding prohibited financial interests.

This document sets forth the times and locations that the Ohio program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m. [E.S.T.], on April 3, 1995. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. [E.S.T.], on March 27, 1995. Requests to present oral testimony at the hearing must be received by 4 p.m. [E.S.T.], on March 24, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. General background information on the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning Ohio's program and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 69 (PA 69) by letter dated September 22, 1994 (Administrative Record No. OH–2059). In this amendment, Ohio proposed to revise two rules at Ohio Administrative Code (OAC) sections 1501:13–1–03 and 13–7–05 to make the Ohio program as effective as the corresponding Federal regulations concerning financial interest statements, appeal procedures for remedial actions regarding prohibited financial interests, and yield data for pasture or grazing land.

OSM announced receipt of PA 69 in the October 21, 1994, **Federal Register** (59 FR 53122), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 21, 1994.

OSM and Ohio staff met on February 6, 1995, to discuss OSM's questions and concerns about PA 69 (Administrative Record No. OH–2098). In response to OSM's February 6, 1995, questions and comments, Ohio provided Revised Program Amendment Number 69 (PA 69R) by letter dated March 8, 1995 (Administrative Record No. OH–2099). In PA 69R, Ohio is proposing further revisions to one rule at OAC section 1501:13–1–03 as described below:

(1) *Ohio Reclamation Board of Review Hearing Officers Included Under Definition of ''Employee'':* Ohio is further revising paragraph (D)(2) to include hearing officers of the Ohio Reclamation Board of Review under the definition of ''employee.'' Ohio is also revising paragraphs (F)(1), (G)(1), (H), and (L)(3) to delete previously proposed separate references to these hearing officers because Ohio is now proposing that those hearing officers be included under the definition of ''employee'' in this rule.

(2) *Use of Financial Interest Statement Form by Members of the Ohio Reclamation Board of Review:* Ohio is revising paragraph (I)(1) to require members of the Ohio Reclamation Board of Review to report all required information concerning employment and financial interests on Form OSM–23.

(3) *Acceptance of Gifts and Gratuities by Members of the Ohio Reclamation Board of Review:* Ohio is revising paragraph (J)(1) to prohibit the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review from coal companies which are conducting or seeking to conduct regulated activities or which have an interest that may be substantially affected by the performance of the Board members' official duty.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. [est], on March 24, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field

Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

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

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 935

Intergovernment relations, Surface mining, Underground mining.

Dated: March 10, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–6591 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA28

[DOD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Transplants

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish coverage for heart-lung, single or double lung, and combined liver-kidney transplantation for those patients who meet specific patient selection criteria; establish preauthorization requirements for heart, liver, heart-lung, single or double lung, combined liver-kidney transplantation, high dose chemotherapy and stem cell transplantation, and air ambulance (in conjunction with lung or heart-lung transplantation preauthorizations); extend coverage of cardiac rehabilitation to those patients who have had heart valve surgery, heart or heart-lung transplantation, authorize an exception to the ambulance benefit to allow organ transplantation candidates to be transported to a certified CHAMPUS organ transplant center instead of the closest appropriate facility, and authorize pulmonary rehabilitation for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Director, OCHAMPUS, or a designee, recognize certain transplant centers that meet specific criteria as an authorized CHAMPUS institutional provider, and clarify the CHAMPUS position on consortium programs for organ transplantation to allow individual hospitals which are members of a consortium to use the combined (pooled) experience and survival data of the consortium team to meet CHAMPUS requirements for authorization as a certified CHAMPUS organ transplant center.

DATES: Comments must be received on or before May 16, 1995.

ADDRESSES: All comments concerning this proposed rule should be addressed to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, OCHAMPUS, Program Development Branch, telephone (303) 361–1227.

SUPPLEMENTARY INFORMATION: OCHAMPUS has been actively following the development of organ transplantation for the past 10 years to define an established method of treatment for patients who have exhausted more conservative medical and surgical treatments. Following is an overview of the events which have led to the decision to allow CHAMPUS coverage for heart-lung, single or double lung, and combined liver-kidney transplantation:

- In November 1990, OCHAMPUS requested the Agency for Health Care Policy and Research (AHCPR) to conduct a technology assessment on the safety and efficacy of heart-lung and single or double lung transplantation. In response to our request, AHCPR informed OCHAMPUS that an assessment was already in progress as a result of a request by the Health Care Financing Administration (HCFA).

Because of an increase in demand for heart-lung and single or double lung transplantation by the CHAMPUS beneficiary population, OCHAMPUS urged AHCPR to provide preliminary interim guidelines for heart-lung and single or double lung transplantation which could be used until finalization of their formal technology assessment. In response to this request, AHCPR asked the National Heart Lung and Blood Institute (NHLBI) to assist in the development of interim guidelines. On February 28, 1991, NHLBI completed the AHCPR request for preliminary

interim guidelines on heart-lung and single or double lung transplantation.

• In September 1992, CHAMPUS requested the AHCPR to conduct a technology assessment regarding the safety and efficacy of combined liver-kidney transplantation. The AHCPR technology assessment was completed on November 12, 1992. The findings of the AHCPR assessment indicated that combined liver-kidney transplantation is an effective intervention in improving survival in patients with end-stage renal and hepatic disease.

• By August 1993, AHCPR finalized the formal technology assessment on both heart-lung and single or double lung transplantation for HCFA and forwarded a copy to OCHAMPUS. The AHCPR assessments indicated that heart-lung and single or double lung transplantations were safe and effective treatment for patients meeting specific clinical criteria when performed by institutions having demonstrated certain levels of experience and success. The patient selection and institutional criteria recommended by the AHCPR technology assessments were very similar to the interim guidelines developed by NHLBI in February 1991.

Due to the Presidential moratorium on publication of regulations, OCHAMPUS decided to proceed without rulemaking and to implement the recommendations of the interim guidelines for heart-lung and single or double lung transplantations from NHLBI and the final recommendations from AHCPR for combined liver-kidney transplantation to meet the increasing needs of the CAMPUS beneficiary population for coverage of these procedures. OCHAMPUS established effective dates of coverage based on NHLBI and AHCPR reports. OCHAMPUS adopted the following beginning dates of coverage for:

• Combined liver-kidney transplantation on November 12, 1992.

• Heart-lung and single or double lung transplantations on February 28, 1991. However, CHAMPUS would consider retroactive coverage for any heart-lung; single or double lung transplantation performed at a facility which met the interim criteria established by NHLBI for both patient selection and facility certification criteria.

OCHAMPUS is publishing this proposed rule to formally notify the public of the specific CHAMPUS requirements for coverage of benefits for heart-long, single or double lung and combined liver-kidney transplantations to include related services and supplies such as air ambulance in certain circumstances when determined to be medically necessary.

This proposed rule also authorizes cardiac rehabilitation following heart valve surgery, heart and heart-lung transplantation, and pulmonary rehabilitation for beneficiaries who conditions are considered appropriate according to guidelines that will be implemented by the Director, OCHAMPUS, or a designee.

In addition, this proposed rule outlines the specific requirements for providers who wish to be certified as a CHAMPUS approved organ transplant center including requirements for consortia programs. CHAMPUS recognizes that many facilities performing organ transplantations (particularly pediatric hospitals) are not able to meet CHAMPUS standards for certification as an authorized transplant center. However, CHAMPUS will allow facilities not able to meet the standards to qualify as a CHAMPUS authorized transplant center when they belong to a consortium program whose combined experience and survival data meet the CHAMPUS criteria for qualifying as a certified CHAMPUS organ transplant center.

The specified definitions and procedures outlined in the rule for facilities to use in calculating survival rates for transplantation use a simpler format but are indential to those published by HCFA (52 FR 10947, April 6, 1987).

At this time, OCHAMPUS, wishing to protect beneficiaries from incurring out-of-pocket expenses as a result of noncovered care related to organ transplantation and to ensure the prudent expenditure of public funds, is proposing to require transplantation preauthorization for high dose chemotherapy and stem cell transplantation, all initial and retransplanted organs, except kidney and cornea, and preauthorization for air ambulance for heart-lung and single or double lung transplantation. The preauthorization requirement will protect both the beneficiary and the provider.

Regulatory Procedures

OMB has determined that this is not a significant rule as defined by Executive Order 12866.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

This proposed rule will not involve any significant burden on OCHAMPUS beneficiaries or providers. Based on national statistics for heart-lung, single or double lung and combined liver-kidney transplantation, it is estimated that .005% or less of the 6 million CHAMPUS user population, will require a heart-lung, single or double lung, or a combined liver-kidney transplantation. The proposed rule will broaden the scope of CHAMPUS benefits while protecting the beneficiaries and providers from incurring additional costs.

This rule represents an expansion of benefits under the CHAMPUS program, resulting in facility certification of transplant centers and narrative summaries for evaluation and assessment for preauthorization of transplantations. These transplant centers are accustomed to the proposed reporting requirements and would not review this as an administrative intrusion. Based on the above rationale, it is felt that proposed reporting requirements would not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is proposed to be amended by revising paragraphs (d)(3)(v)(B), (d)(3)(v)(D), and (e)(5) and by adding paragraphs (d)(3)(v)(E), (e)(18)(i)(F), (e)(18)(i)(G), and (e)(20) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(v) * * *

(B) Ambulance service cannot be used instead of taxi service and is not payable when the patient's condition would have permitted use of regular private transportation; nor is it payable when transport or transfer of a patient is primarily for the purpose of having the patient nearer to home, family, friends, or personal physician. Except as described in paragraph (d)(3)(v)(A) and (d)(3)(v)(E) of this section transport

must be to the closest appropriate facility by the least costly means.

* * * * *

(D) Except as described in paragraph (d)(3)(v)(E) of this section ambulance service by other than land vehicles (such as a boat or airplane) may be considered only when the pickup point is inaccessible by a land vehicle, or when great distance or other obstacles are involved in transporting the patient to the nearest hospital with appropriate facilities and the patient's medical condition warrants speedy admission or is such that transfer by other means is contraindicated.

(E) (*i*) Advanced life support air ambulance and certified advanced life support attendant are covered services for heart-lung; single or double lung transplantation candidates and may be preauthorized in conjunction with the preauthorization for the transplantation. Air ambulance transport for organ transplantation candidates other than heart-lung; single or double lung transplantation may be covered if determined to be medically necessary.

(*ii*) Advanced life support air ambulance and certified advanced life support attendant shall be reimbursed subject to standard reimbursement methodologies.

* * * * *

(e) * * *

(5) *Organ transplanation*—(i) *General.* (A) CHAMPUS may cost-share medically necessary services and supplies related to organ transplants for:

(*1*) Evaluation of a potential candidate's suitability for organ transplant, whether or not the patient is ultimately accepted as a candidate for transplant.

(*2*) Pre- and post-transplant inpatient hospital and outpatient services.

(*3*) Pre- and post-operative services of the transplant team.

(*4*) Blood and blood products.

(*5*) FDA approved immunosuppression drugs to include off-label uses when determined to be medically necessary and generally accepted practice within the general medical community, (i.e., non-investigational).

(*6*) Complications of the transplant procedure, including inpatient care, management of infection and rejection episodes.

(*7*) Periodic evaluation and assessment of the successfully transplanted patient.

(*8*) The donor acquisition team, including the costs of transportation to the location of the donor organ and transportation of the team and the donated organ to the location of the transplant center.

(*9*) The maintenance of the viability of the donor organ after all existing legal requirements for excision of the donor organ have been met.

(B) CHAMPUS benefits are payable for recipient costs when the recipient of the transplant is a beneficiary, whether or not the donor is a beneficiary.

(C) Donor costs are payable when:

(*1*) Both the donor and recipient are CHAMPUS beneficiaries.

(*2*) The donor is a CHAMPUS beneficiary but the recipient is not.

(*3*) The donor is the sponsor and the recipient is a beneficiary. (In such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(*4*) The donor is neither a CHAMPUS beneficiary nor a sponsor, if the recipient is a CHAMPUS beneficiary. (Again, in such an event, donor costs are paid as a part of the beneficiary and recipient costs.)

(D) If the donor is not a beneficiary, CHAMPUS benefits for donor costs are limited to those directly related to the transplant procedure itself and do not include any medical care costs related to other treatment of the donor, including complications.

(E) CHAMPUS benefits will not be allowed for:

(*1*) Expenses waived by the transplant center.

(*2*) Services and supplies not provided in accordance with applicable program criteria.

(*3*) Administration of an experimental or investigational immunosuppressant drug that is not FDA approved.

(*4*) Pre- or post-transplant nonmedical expenses.

(*5*) Transportation of an organ donor.

(ii) *Preauthorization requirements.* The Director, OCHAMPUS, or a designee, is the preauthorizing authority for stem cell transplantation and all initial and retransplanted solid organs, except kidney and corneal. Preauthorization approval for stem cell, solid organ transplantations, and transportation by air ambulance (for lung or heart-lung transplantation patients) shall remain in effect as long as the beneficiary continues to meet the specific transplant criteria set forth herein, or until the approved transplant occurs.

(iii) *Kidney transplantation.* (A) With specific reference to acquisition costs for kidneys, each hospital that performs kidney transplantations is required for Medicare purposes to develop for each year separate standard acquisition costs for kidneys obtained from live donors and kidneys obtained from cadavers. The standard acquisition costs for cadaver kidneys is compiled by dividing the total cost of cadaver kidneys acquired by the number of transplantations using cadaver kidneys. The standard acquisition cost for kidneys from live donors is compiled similarly using the total acquisition cost of kidneys from live donors and the number of transplantations using kidneys from live donors. All recipients of cadaver kidneys are charged the same standard cadaver kidney acquisition cost and all recipients of kidneys from live donors are charged the same standard live donor acquisition cost. The appropriate hospital standard kidney acquisition costs (live donor or cadaver) required for Medicare in every instance must be used as the acquisition cost for purposes of providing CHAMPUS benefits.

(B) In most instances for costs related to kidney transplantation, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplantation to include all reasonable preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (Refer to § 199.3(e)(3)(vi), ''Eligibility.'')

(iv) *Liver transplantation.*—(A) *Patient selection criteria.* On July 1, 1983, CHAMPUS benefits are payable for liver transplantation for beneficiaries who:

(*1*) Are suffering from an irreversible liver process; and,

(*2*) Have exhausted more conservative medical and surgical treatments; and,

(*3*) Are approaching the terminal phase of their illness (e.g., death is imminent, irreversible damage to the central nervous system is inevitable, or the quality of life has deteriorated to unacceptable levels), and

(*4*) Are considered appropriate for liver transplantation according to guidelines adopted by the Director, OCHAMPUS.

(B) *Contraindications.* CHAMPUS shall not provide coverage for liver transplantation when any of the following contraindications exist;

(*1*) Significant systemic or multisystemic disease (other than hepatic failure) which limits the possibility of full recovery and may compromise the function of the newly transplanted organ.

(*2*) Active alcohol or other substance abuse.

(*3*) Malignancies metastasized to or extending beyond the margins of the liver; or

(*4*) Life threatening or uncontrollable abdominal or systemic sepsis.

(v) *Combined liver-kidney transplantation*—(A) *Patient selection criteria.* On November 12, 1992, CHAMPUS benefits are payable for combined liver-kidney transplantation for beneficiaries who:

(*1*) Are suffering from concomitant, irreversible hepatic and renal failure; and

(*2*) Have exhausted more conservative medical and surgical treatments for hepatic and renal failure; and

(*3*) Have plans for long-term adherence to a disciplined medical regimen that are feasible and realistic; and

(*4*) Are considered appropriate for combined liver-kidney transplantation according to guidelines adopted by the Director, OCHAMPUS.

(B) *Contraindications.* CHAMPUS shall not provide coverage for combined liver-kidney transplantation when any of the following contraindications exist:

(*1*) Significant systemic or multisystemic disease (other than hepatorenal failure) which limits the possibility of full recovery and may compromise the function of the newly transplanted organs.

(*2*) Active alcohol or other substance abuse.

(*3*) Malignancies metastasized to or extending beyond the margins of the liver and/or kidney.

(*4*) Life threatening or uncontrollable abdominal or systemic sepsis.

(vi) *Heart transplantation: Patient selection criteria.* On November 7, 1986, CHAMPUS benefits are payable for heart transplantation for beneficiaries who:

(A) Have an end-stage cardiac disease which has not responded to or no longer responds to other appropriate medical and surgical therapies which might be expected to yield both short- and long-term (3 to 5 year) survival comparable to that of heart transplantation; and

(B) Have a very poor prognosis as a result of poor cardiac functional status (e.g., less than a 25 percent likelihood of survival for six months); and

(C) Have plans for long-term adherence to a disciplined medical regimen that are feasible and realistic.

(D) Are considered appropriate for heart transplantation according to guidelines adopted by the director, OCHAMPUS.

(vii) *Heart-lung and lung transplantation: Patient selection criteria.* On February 28, 1991, CHAMPUS benefits are payable for heart-lung and lung transplantation for beneficiaries who:

(A) Have irreversible, progressively disabling, end-stage pulmonary or cardiopulmonary disease (for example, less than a 50 percent likelihood of survival for 8 months). Prognosis otherwise must be good for both survival and rehabilitation.

(B) Have tried or considered all other medical and surgical therapies that might have been expected to yield both short- and long-term survival comparable to that of transplantation.

(C) Have a realistic understanding of the range of clinical outcomes that may be encountered.

(D) Have plans for long-term adherence to a disciplined medical regimen that are feasible and realistic.

(E) Are considered appropriate for heart-lung or lung transplantation according to guidelines adopted by the Director, OCHAMPUS.

(viii) *High dose chemotherapy and stem cell transplantation.* CHAMPUS benefits are payable for beneficiaries whose conditions are considered appropriate for high dose chemotherapy and stem cell transplantation according to guidelines adopted by the Director, OCHAMPUS, or a designee.

* * * * *

(18) * * *

(i) * * *

(F) Heart valve surgery.

(G) Heart or Heart-lung Transplantation.

* * * * *

(20) *Pulmonary rehabilitation.* CHAMPUS benefits are payable for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Director, OCHAMPUS, or a designee.

* * * * *

3. Section 199.6 is proposed to be amended by revising paragraph (b)(4)(ii), by removing paragraph (b)(4)(iii); and redesignating paragraphs (b)(4)(iv) through (b)(4)(xiv) as (b)(4)(iii) through (b)(4)(xiii) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(ii) *Organ transplant centers*—(A) *Certification requirements.* To obtain CHAMPUS approval as an organ transplant center, the center must have:

(*1*) An active solid organ transplant program.

(*2*) Participation in a donor organ procurement program and network.

(*3*) An interdisciplinary team to determine the suitability of candidates for transplantation on an equitable basis.

(*4*) An anesthesia team that is available at all times.

(*5*) A nursing service team trained in the hemodynamic support of the patient and in managing immunosuppressed patients.

(*6*) Pathology and immunology resources that are available for studying and reporting the pathological responses to transplantation.

(*7*) Evidence that the center safeguards the rights and privacy of patients.

(*8*) Continual compliance with State transplantation laws and regulations, if any.

(*9*) Legal counsel familiar with transplantation laws and regulations.

(B) *Administrative requirement.* A CHAMPUS authorized organ transplant center must provide a written statement to the certifying authority agreeing to the following administrative requirements:

(*1*) Bill for all services and supplies related to the organ transplantation performed by its staff and bill for services rendered by the donor hospital after all existing legal requirements for excision of the donor organ are met.

(*2*) Bill all donor services in the name of the CHAMPUS patient.

(C) *Reporting requirements.* The transplant center must report to the certifying authority any decrease in actuarial survival rates below the actuarial survival rate established by CHAMPUS for initial facility certification.

(D) *Liver transplant centers.* CHAMPUS shall provide coverage for liver transplantation procedures performed only by experienced transplant surgeons at centers complying with the provisions in paragraph (b)(4)(ii)(A) of this section. The transplant center must:

(*1*) Have board eligible or board certified physicians and other experts in the fields of hepatology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, and anesthesiology to complement a qualified transplant team.

(*2*) Have a transplant surgeon that is specifically trained for liver grafting who can assemble and train a team to function successfully whenever a donor liver is available.

(*3*) Have at least a 70 percent one year actuarial survival rate for 10 cases as calculated using the Kaplan-Meier product limit method. At least a 70 percent one year actuarial survival rate for all subsequent liver transplants must be maintained for continued CHAMPUS approval.

(E) *Heart transplant centers.* CHAMPUS shall provide coverage for heart transplantation procedures performed only by experienced

transplant procedures performed only by experienced transplant surgeons at centers complying with provisions in paragraph (b)(4)(ii)(A) of this section. The transplant center must:

(*1*) Have experts in the fields of cardiology, cardiovascular surgery, anesthesiology, immunology, infectious disease, nursing, social services, and organ procurement to complement the transplant team.

(*2*) Have an active cardiovascular medical and surgical program as evidenced by a minimum of 500 cardiac catheterization and coronary arteriograms and 250 open heart procedures per year.

(*3*) Have an established heart transplant program with documented evidence of 12 or more heart transplants in each of the three consecutive preceding 12-month periods prior to the date of application (a total of 36 or more heart transplant procedures).

(*4*) Demonstrate actuarial survival rates of 73 percent for one year and 65 percent for two years for patients who have had heart transplants since January 1, 1982 at that facility. The Kaplan-Meier product limit method shall be used to calculate actuarial survival.

(*5*) CHAMPUS approval will lapse if either the number of heart transplants falls below 8 in 12 months or if the one-year actuarial survival rate falls below 60 percent for a consecutive 24-month period.

(F) *Lung transplant.* This policy applies only to those centers seeking CHAMPUS certification for lung transplantation only. Centers seeking CHAMPUS certification as heart-lung transplant centers must meet additional requirements outlined in paragraph (b)(4)(ii)(H) of this section.

(*1*) CHAMPUS shall provide coverage for lung transplant procedures performed only be experienced transplant surgeons at centers complying with the provisions outlined in paragraph (b)(4)(ii)(A) of this section, and meeting the following criteria:

(*2*) The center must have:

(*i*) Experts in the fields of cardiology, cardiovascular surgery, pulmonary disease, anesthesiology, immunology, infectious disease, nursing, social services, and organ procurement to complement the transplant team.

(*ii*) Performed lung (single and/or double) transplantation in at least 10 patients within the 12 months prior to application and in at least an additional 10 patients prior thereto.

(*iii*) Demonstrated Kaplan-Meier actuarial survival rates of no less than 65 percent at one-year post-transplant for patients who have undergone a lung transplantation at the center since January 1, 1987.

(G) *Heart-Lung and lung transplant.* CHAMPUS shall provide coverage for heart-lung transplantation procedures performed only by experienced transplant surgeons at centers complying with the provisions outlined in paragraph (b)(4)(ii)(A) of this section, and meeting the following criteria:

(*1*) The institutional and team experience shall be based upon all lung and heart-lung transplantations performed since January 1, 1987, both for transplant experience and actuarial survival rates.

(*2*) To be accepted for lung transplantation (single and/or double), an institution and team must have:

(*i*) Performed lung and/or heart-lung transplantation in at least 10 patients within the 12 months prior to application and in at least an additional 10 patients prior thereto, and

(*ii*) Achieved a documented Kaplan-Meier actuarial survival rate of no less than 65 percent at one-year.

(*iii*) Fulfilled existing facility certification criteria for heart transplantation (either Medicare or CHAMPUS); or fulfilled the CHAMPUS facility certification criteria for facilities applying only for lung transplantation as outlined in paragraph (b)(4)(ii)(G) of this section.

(*3*) To be accepted for heart-lung transplantation, an institution and team must fulfill the CHAMPUS facility certification criteria for lung transplantation and the existing facility certification criteria (either Medicare of CHAMPUS) for heart transplantation.

(*H*) *Calculation of survival rates for transplantation.* Each facility seeking CHAMPUS certification as a transplant center must calculate survival rates using the Kaplan-Meier (product-limit) technique utilizing the definitions and rules below. Each applicant facility must identify its Kaplan-Meier actuarial survival percentage at one year. Heart transplant facilities must also identify its Kaplan-Meier actuarial survival percentage at two year point. Each applicant facility must also submit calculations to support the reported actuarial survival percentage.

(*1*) Each applicant facility will report all transplantation experience from its inception at the facility, unless this section otherwise prescribes a starting date for the reporting of specific transplantation experience.

(*2*) CHAMPUS recognizes the team experience gained in retransplantation. Therefore, retransplantation experience must be reported and calculated in the same manner as first transplantation experience.

(*3*) All experience and survival rates must be reported as of a point in time that is no more than 90 days prior to the submission of the application for CHAMPUS certification. That date is referred to as the fiducial date.

(*4*) Calculations assume survival only to (and censoring on) the date of last ascertained survival.

(*5*) Patients who are not thought to be dead are considered ''lost to follow-up'' if they were:

(*i*) Operated more than 120 days before the fiducial date, but have no ascertained survival within 60 days of the fiducial date; or

(*ii*) Operated from 61 to 120 days before the fiducial date, but ascertained survival is less than 60 days from date of transplantation; or

(*iii*) Operated within 60 days of the fiducial date, but not ascertained to have survived as of the fiducial date.

(*6*) Survival must be calculated with the assumption that each patient in the ''lost to follow-up'' category died on or one day after the date of last ascertained survival.

(*7*) Clearly defined and well justified secondary or alternate treatment of ''lost to follow-up'' may also be submitted, but primary attention will be given to the results using definitions and procedures specified above.

(*8*) Facilities seeking certification for lung and/or heart-lung transplantation must report all lung and heart-lung transplantation experience beginning January 1, 1987. When facility experience is reported and the actuarial survival is calculated, lung and heart-lung transplantation experience must be combined to arrive at a single one year survival percentage.

(I) *Combined liver-kidney transplants.* If the facility is authorized as a CHAMPUS (or Medicare) approved liver transplant center as outlined in paragraphs (b)(4)(ii)(B) and (b)(4)(ii)(E) of this section, the facility may be considered to be a CHAMPUS approved center to perform combined liver-kidney transplantations.

(J) *Organ transplant consortia.* CHAMPUS shall approve individual organ transplant centers which meet the above provisions in paragraph (b)(4)(ii)(B) of this section, and would otherwise qualify as a CHAMPUS-authorized transplant center by:

(*1*) Using the combined experience and actuarial survival data of a consortium of which a single transplant team rotates among member hospitals for purposes of meeting the certification requirements outlined in paragraphs (b)(4)(ii)(E), (b)(4)(ii)(F), (b)(4)(ii)(G), (b)(4)(ii)(H), and (b)(4)(ii)(I) of this

section, for liver, heart, lung, heart-lung and combined liver-kidney when,

(*i*) The hospitals are under common control or have a formal affiliation arrangement with each other under the auspices of an organization such as a university or a legally-constituted medical research institute;

(*ii*) The hospitals share resources by using the same personnel or services in their transplant programs. The individual physician members of the transplant team practice in all of the hospitals;

(*iii*) The same organ procurement organization, immunology, and tissue typing services are used by all the hospitals; and

(*iv*) The hospital submits its individual and combined experience and survival data to the CHAMPUS authorizing authority, and

(*v*) If one of the hospitals is a pediatric transplant program, in addition to the requirements previously listed the following apply;

(*A*) Although pediatric surgeons and pathologists are not required to practice in the adult hospital and vice versa, it can be documented that they otherwise function as members of the transplant team.

(*B*) The facility must have other solid organ transplant program(s) that meet CHAMPUS criteria for certification based on actuarial survival rates and experience.

(*C*) The surgeon responsible for the transplant is commonly involved in the type of surgery (i.e., related to hepatology, cardiology and pulmonary medicine) with children of the age and size in whom the transplant is being performed, and

(*D*) If the program involves heart transplant, the facility must have an active pediatric cardiovascular medical and surgical program with a minimum of 150 cardiac catheterizations performed per year on patients in the pediatric range. A surgical case load of 200 operations per year should be performed in combined adult and pediatric programs: Of these, at least 100 operation per year (three of four should use extracorporeal circulation) should be on pediatric patients. In programs serving only a pediatric population, at least 100 cardiac surgical procedures (three of four should use extracorporeal circulation) should be performed per year.

* * * * *

4. Section 199.7 is proposed to be amended by revising paragraph (f)(1)(ii) to read as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(f) * * *

(1) * * *

(ii) *Time limit on preauthorization.* Approved preauthorizations are valid for specific periods of time, appropriate for the circumstances presented and specified at the time the preauthorization is approved. In general, preauthorizations are valid for 30 days. If the preauthorized service or supplies are not obtained or commenced within the specified time limit, a new preauthorization is required before benefits may be extended. Special rules apply for organ, stem cell transplantation, and air ambulance (in conjunction with lung or heart-lung transplantation preauthorizations) (refer to § 199.4(e)(5)(ii)).

* * * * *

5. Section 199.15 is proposed to be amended by revising paragraph (b)(4)(ii)(C) to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) An approved preauthorization shall state the number of days, appropriate for the type of care involved, for which it is valid. In general, preauthorizations will be valid for 30 days. If the services or supplies are not obtained within the number of days specified, a new preauthorization request is required. Special rules apply for organ, stem cell transplantation, and air ambulance (in conjunction with lung or heart-lung transplantation preauthorizations (refer to § 199.4(e)(5)(ii)).

* * * * *

Dated: March 13, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6561 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AD21

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby proposes to extend for an additional 42 months through December 15, 1998, the effectiveness of the final regulations that authorize and govern the incidental, unintentional take of small numbers of polar bear and walrus during year-round oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska.

DATES: Comments on this proposed rule must be received by May 16, 1995.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the same address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, or sent by FAX to 907/786–3816. Comments and materials received in response to this proposed action will be available for public inspection at this address during the normal working hours identified above.

FOR FURTHER INFORMATION CONTACT: Dave McGillivary, Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, 907/786–3800, or Jeff Horwath, in the Service's Division of Fish and Wildlife Management Assistance, Arlington, Virginia, at 703/358–1718.

SUPPLEMENTARY INFORMATION: Under provisions of section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA), the taking of small numbers of marine mammals may be allowed incidental to specified activities other than commercial fishing if the Director of the Service finds, based on the best available scientific evidence available, that the cumulative total of such taking over a 5-year period will have a negligible effect on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth: Permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and on behalf of 14 other energy related entities (hereafter collectively referred to as ''Industry'') petitioned the Service

to promulgate regulations pursuant to section 101(a)(5) of the MMPA. A proposed rule was published by the Service on December 30, 1992 (57 FR 62283), with a 75-day comment period that expired on March 15, 1993.

The proposed rule announced that the Service has prepared a draft Environmental Assessment in conjunction with the rulemaking action; and that when a final decision was made on the Industry applications for incidental take authority, the Service would decide whether this was a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). Subsequent to the close of the proposed rule's comment period, the Service concluded in a Finding of No Significant Impact (FONSI) that this was not a major Federal action under the NEPA and preparation of an Environmental Impact Statement was not required.

Subsequently, on November 16, 1993, the Service published in the **Federal Register** final regulations effective December 16, 1993, to authorize and govern the incidental, unintentional take of small numbers of polar bears and walrus during Industry operations (exploration, development, and production) year-round in the Beaufort Sea and adjacent coast of Alaska. The Service concluded in that final rule, based on the best scientific evidence available, that the cumulative total of such taking by Industry over a 5-year period would have a negligible effect on these species and would not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives.

However, although the MMPA authorizes regulations to be issued for periods of up to five years, the Service's final regulations are initially effective only for an 18-month period through June 16, 1995, as a result of additional provisions in the final regulations. The provisions stipulate that extension of the final regulations for an additional 42 months for the full 5-year term authorized by the MMPA (through December 15, 1998) is contingent upon the following: (1) Within a period of 18 months from the effective date of this rulemaking, the Service must develop and begin implementing a Polar Bear Habitat Conservation Strategy (Strategy), pursuant to the management planning process in Section 115 of the MMPA, and in furtherance of the goals of Article II of the 1973 international Agreement on the Conservation of Polar Bears (1973 Agreement); (2) the identification and designation of special considerations or closures of any polar bear habitat components to be further protected; (3) public notice and comment on those considerations or closures; (4) affirmative findings of the Secretary of the Interior; and (5) public notice and comment on the Secretary's intention to extend the term of the incidental take regulations for a period not to exceed a total of 5 years.

The final rule explained the additional requirement to develop a Strategy as follows:

> In addition to its responsibilities under the [MMPA], the Department of the Interior has further responsibilities under the 1973 multilateral Polar Bear Agreement. Specifically, Article II of this Agreement requires that:
>
> Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns * * *
>
> In comport with, and to meet more fully the intent of the Agreement, under this final rulemaking, within 18 months of its effective date, the Service has been directed by the Secretary of the Interior to develop and begin implementing a strategy for the identification and protection of important polar bear habitats. Development of such strategy will be done as part of the Service's management plan process pursuant to Section 115 of the (MMPA), and in cooperation with signatories to the Polar Bear Agreement, the Department of State, the State of Alaska, Alaskan Natives, Industry, conservation organizations, and academia.

As required by the final Beaufort Sea incidental take regulations, the Service has developed a draft Strategy, published public notice of its availability in the **Federal Register** (60 FR 10868), and is seeking review and comment on it. It was developed with the involvement and input of Alaska Natives, Industry, the National Biological Service, State of Alaska, conservation organizations, academia, and others, and it includes Native traditional knowledge on polar bear behavior and habitat use.

The draft Strategy identifies and designates important polar bear feeding and denning areas and proposes measures for enhanced consideration of these areas from oil and gas exploration, development, and production. It also proposes additional measures for polar bear habitat protection in furtherance of the goals of the 1973 multilateral Polar Bear Agreement. These measures consist of a proposed Native Village Communication Plan, creation and support of a Polar Bear Advisory Council, and development of International Conservation Initiatives. The draft Strategy also identifies research needs related to habitat use and relative importance of habitat types, and effects of contaminants and industrial activities on polar bears.

For the reasons set out in this notice and in the final Beaufort Sea rule published on November 16, 1993, the Service hereby proposes to extend the effectiveness of the regulations in 50 CFR part 18, subpart J (Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska) for the full 5-year term authorized by the MMPA. Thus the regulations currently in effect from December 16, 1993, through June 16, 1995, would not expire but rather would be extended through December 15, 1998. This proposal to extend the final Beaufort Sea regulations is made on the basis that the Service's draft Strategy, if adopted, is in keeping with the stipulations in those final regulations. If the provisions of the draft Strategy are adopted, and its implementation is initiated, the Service will have met the requirements of the Beaufort Sea regulations; a final rule would be issued subsequent to the close of the comment period associated with the draft Strategy, and this proposed rule's public comment period.

Required Determinations

During the rulemaking process to develop Beaufort Sea regulations, the Service prepared an Environmental Assessment with FONSI on Industry's proposed actions. The rule was also reviewed under Executive Order 12866. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it was also determined the rule would not have a significant economic effect on a substantial number of small entities. Furthermore, the final rule was not expected to have a potential takings implication under Executive Order 12630 because it authorized incidental, but not intentional, take of polar bear and walrus by Industry and thereby exempts them from civil and criminal liability. The rule also did not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612. The above identified required determinations associated with the Service's original rulemaking process associated with the Beaufort Sea are still valid for this proposed rule.

The collections of information associated with this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*) and assigned clearance number 1018–0070.

List of Subjects in 50 CFR part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 18.122 of Subpart J is proposed to be revised to read as follows:

§ 18.122 Effective dates.

Regulations in this subpart, originally effective for an 18-month period from December 16, 1993, through June 16, 1995, will continue in effect for an additional 42 month period through December 15, 1998, for oil and gas exploration, development, and production activities.

Dated: March 10, 1995.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–6593 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12 Month Finding for a Petition to List the Anadromous Atlantic Salmon (Salmo Salar) Populations in the United States as Endangered or Threatened

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), collectively the Services, announce a 12-month finding on a petition to list the Atlantic salmon (*Salmo salar*) throughout its range in the United States as an endangered species pursuant to the Endangered Species Act of 1973 (Act). A Biological Review Team (Team), comprising staff from both NMFS and FWS, have compiled and analyzed available data, and prepared a ''Status Review for Anadromous Atlantic Salmon in the United States.'' The Services have determined that available biological evidence indicates that the species described in the petition does not meet the definition of ''species'' under the Endangered Species Act. Consequently, the Services conclude that the petitioned action to list Atlantic salmon throughout its historic United States range is not warranted.

DATES: The finding made in this document was made on March 10, 1995.

ADDRESSES: Comments or questions concerning this petition finding should be sent to the Chief, Division of Endangered Species, FWS, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or the Chief, Habitat and Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, Massachusetts 01930. The petition finding and supporting data are available for public inspection by appointment during normal business hours at the above addresses and at FWS, 1033 South Main Street, Old Town, Maine 04468 (207–827–5938).

FOR FURTHER INFORMATION CONTACT: Paul Nickerson, Chief, Division of Endangered Species, at the Hadley, Massachusetts address (413–253–8615) or Mary Colligan, Marine Habitat Specialist, at the Gloucester, Massachusetts address (508–281–9116).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act requires that for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that the petitioned action may be warranted, the FWS or the NMFS, as appropriate, must undertake a review of the species in question and make a finding within 12 months of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be ''warranted but precluded'' should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

In October and November, 1993, the Services received a petition from RESTORE: the North Woods, Biodiversity Legal Foundation and Jeffrey Elliot to list naturally spawning anadromous Atlantic salmon (*Salmo salar*) throughout its known historic range in the conterminous United States, and to designate critical habitat. The petitioners presented current and historical information on Atlantic salmon populations, identified possible threats including commercial and sport fishing, pollution, barriers, land use practices, genetic disruption and others, and cited numerous scientific articles to support the petition.

The Services published a notice of finding on January 20, 1994 (59 FR 3067–3068), stating that the petition presented substantial information indicating that the requested action may be warranted. The Services also announced their intention to conduct a status review and solicited information from interested parties. To formalize the cooperative approach between NMFS and FWS in response to this petition, a Memorandum of Agreement was signed on March 14, 1994, by the regional directors of the respective agencies. A Biological Review Team (Team), comprising staff from the Services, has compiled and analyzed available data. The Team prepared a report entitled ''Status Review for Anadromous Atlantic Salmon in the United States, January 1995'' which provides detailed information, discussion and references. This report is summarized below and is available upon request (see **ADDRESSES**).

Life History

Anadromous Atlantic salmon have a relatively complex life history that extends from spawning and juvenile rearing in freshwater rivers to extensive feeding migration in the high seas. As a result, Atlantic salmon have several distinct phases in their life history that are identified by specific behavioral and physiological changes. Adult Atlantic salmon ascend the rivers of New England beginning in spring, a migration that peaks in June and continues into fall. Spawning occurs in late October through November. Good spawning habitat has a gravel substrate and adequate water circulation to keep eggs well oxygenated. Female anadromous Atlantic salmon produce between 1,500 and 1,800 eggs per kilogram (2.2 pounds) of body weight; on average each female Maine Atlantic salmon produces 7,200 eggs. Eggs hatch in late March or April and the resulting

alevin remain in the redd for about 6 weeks and are nourished by their yolk sac. When alevin emerge from the gravel about mid-May and begin feeding, they are referred to as fry. Fry become parr as vertical bars become visible on the sides of their bodies. In spring, when the parr are 2 or 3 years of age and 12.5 centimeters (cm) to 15 cm (5 to 6 inches (in.)) long, they undergo smoltification, a process where morphological and physiological changes prepare the smolt for the transition from fresh to salt water. Most smolts in New England migrate to sea in May and begin their ocean feeding migration.

The marine life history of Atlantic salmon of U.S. origin is not as well understood as the freshwater phase. Scientists have discovered correlations between natural mortality in the marine environment and abiotic factors, particularly sea surface temperature. Atlantic salmon of U.S. origin are highly migratory, undertaking long marine migrations from the mouth of U.S. rivers to the northwest Atlantic Ocean where they are distributed seasonally over much of the region. Upon entry into the nearshore waters of Canada, the U.S. post-smolts become part of a mixture of stocks of Atlantic salmon from various North American streams. Data from commercial harvest indicate that post-smolts overwinter in the southern Labrador Sea and in the Bay of Fundy. Direct sampling during the winter months is needed to better understand post-smolt Atlantic salmon distribution in the North Atlantic. Most Atlantic salmon of U.S. origin spend two winters in the ocean before returning to fresh water for spawning. Those that return after only 1 year at sea are called grilse.

Consideration as a ''Species'' Under the Act

The Act defines species as ''any species of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.'' This definition allows for the recognition of distinct population segments (DPSs) at levels below taxonomically recognized species or subspecies. Guidance on defining a DPS of a species under the Act has been provided by NMFS' ''Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon'' (56 FR 58612, November 20, 1991). This Policy states that a Pacific salmon population will be considered distinct, and therefore a species under the Act, if it represents an evolutionarily significant unit (ESU) of the biological species. Because the structure of Atlantic salmon populations is similar to that of Pacific salmonids, the ESU approach currently used for the Pacific salmonids provides a practical framework for delineating DPSs of Atlantic salmon under the Act. Accordingly, the Team used the ESU approach to define DPSs of Atlantic salmon. To qualify as a DPS, a population (or group of populations) of indigenous Atlantic salmon must be reproductively isolated from conspecific populations and must be evolutionarily significant (i.e. contribute substantially to the ecological/genetic diversity of the species).

Available scientific information indicates that naturally reproducing populations of Atlantic salmon in U.S. rivers are substantially reproductively isolated from those in Canada. Within the United States, Atlantic salmon populations have shown some evidence of straying but recolonization from adjacent watersheds is minimal. Gene flow between wild populations or stock transfers were determined not to have been sufficient to have eliminated all historic differences. As a group, these seven populations meet the criterion of reproductive isolation.

The second criterion used was evolutionary significance, or the substantial ecological and genetic importance of a population(s) to the species as a whole. In salmonids, adaptations to local ecosystems are important to the survival of populations and the survival of the species throughout its range. Examination of U.S. populations of Atlantic salmon provides evidence of their distinctness from stocks in Canada and northern Europe.

The Team categorized U.S. Atlantic salmon populations into three groupings: Extirpated, DPS and candidate species. A critical factor in determining the status of these populations was the historic persistence of a substantial component of natural reproduction. While it is unlikely that U.S. Atlantic salmon populations exist in a genetically pure native form, their continued presence in indigenous habitat suggests that important local adaptations still exist. The documented absence of wild Atlantic salmon from natal habitat for at least two generations (12 years) suggests the total loss of a native population under even the most conservative approach. Atlantic salmon populations in rivers south of the Kennebec River, Maine, were extirpated by the mid-1800's.

The Team determined that the Atlantic salmon populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys Rivers are reproductively isolated and, as a group, are of evolutionary significance. Therefore, the group meets the criteria for consideration as a ''species'' under the Act. The persistence of Atlantic salmon runs, and their link to native populations in the Kennebec River, Penobscot River, Tunk Stream, and St. Croix River are not well understood. Further study is warranted to determine whether Atlantic salmon in these rivers meet the criteria for consideration as ''species'' under the Act.

Distribution and Abundance

The original range of Atlantic salmon in the United States was from the Housatonic River in Connecticut north to U.S. tributaries of the St. Johns River in New Brunswick, Canada. The historic Atlantic salmon run in the United States has been estimated to have approached 500,000 fish.

The species began to disappear from U.S. rivers 150 years ago and currently only remnant populations occur in a limited number of rivers in Maine. Construction of hundreds of dams blocked salmon migration and reduced spawning habitat to a fraction of that available historically. Water pollution and overexploitation further reduced the abundance of Atlantic salmon. Indigenous Atlantic salmon in rivers south of the Kennebec River were extirpated by the mid-1800's. In addition, some populations north of the Kennebec River were also extirpated; most of these were in small rivers with less than 1 hectare (2.5 acres) of available nursery habitat. Beginning in the mid-1800's and continuing to the present time, numerous restoration efforts were undertaken. The Connecticut and Merrimack Rivers provided nearly 40 percent of historic U.S. Atlantic salmon habitat. These rivers are currently the focus of restoration efforts using nonindigenous stocks, and extensive efforts are being undertaken to gain access to historic habitat.

The North American Salmon Working Group's NASWG method for estimating the escapement goal for adequate egg deposition for each river was used. Thus, an escapement goal was determined for each river and the return calculated as a percentage of the escapement goal. Throughout the past 24 years, the Dennys and Narraguagus Rivers have had the best returns relative to available habitat, averaging 20 percent of escapement goal. The Pleasant, Sheepscot, and Machias Rivers have had returns that averaged between 10 and 12 percent of the escapement goal. However, recent downward trends in abundance have put most rivers at less than 10 percent of their respective

escapement goals. Only the Narraguagus River has exceeded 10 percent in the past 7 years.

Determination

Section 4(b)(1)(a) of the Act requires that determinations of whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a status review of the species. The Services have evaluated the status of U.S. Atlantic salmon and determined that available biological evidence indicates that listing the Atlantic salmon as endangered throughout its historic range in the contiguous United States is not warranted. However, the Services have determined that sufficient information is available to support appropriate listing actions for the DPS that consists of populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys Rivers. This DPS is designated as a Category 1 candidate by FWS, and a candidate species by NMFS. In addition, the Services have found that the status of salmon in the Kennebec River, Tunk Stream, Penobscot River and the St. Croix River is uncertain and warrants further study. Therefore, the Atlantic salmon in these rivers are to be designated category 2 candidates by FWS and candidate species by NMFS. Work on a proposed rule to initiate the appropriate listing actions under the Act is underway and the proposed rule will be published promptly.

Author: The primary author of this document is Susan Lawrence of FWS (see **ADDRESSES**). Editorial comments were provided by Michael Amaral, FWS, 22 Bridge Street, Concord, New Hampshire 03301, and Joseph McKeon, FWS, Federal Building, Room 124, Laconia, New Hampshire 03246.

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

Dated: March 10, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, NMFS.

Dated: March 10, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–6611 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 52

Friday, March 17, 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. 95–016–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Tomato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Zeneca Plant Science and Petoseed Company, Inc., seeking a determination of nonregulated status for tomato lines designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase enzyme activity. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these tomato lines present a plant pest risk.

DATES: Written comments must be received on or before May 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–016–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 95–016–01. A copy of the petition and any 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 access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1228; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On February 7, 1995, APHIS received a petition (APHIS Petition No. 94–290–01p) from Zeneca Plant Science of Wilmington, DE, and Petoseed Company, Inc., of Woodland, CA, (Zeneca/Petoseed) requesting a determination of nonregulated status under 7 CFR part 340 for modified T7 processing tomato inbred lines designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase (PG) enzyme activity. As described in the petition, tomato lines B, Da, and F have been developed from an unmodified proprietary inbred tomato line coded as T7, genetically engineered to contain a fragment of the tomato PG gene in the sense or antisense orientation. The PG enzyme is responsible for the breakdown of pectin molecules in the cell walls of tomato fruit during ripening. The inhibition of the PG enzyme resulting from the transcription of the PG gene fragment results in an increased thickness of the tomato, which is a desired characteristic in processing tomatoes.

The PG gene fragment in the subject tomato lines is regulated by the 35S promoter from the plant pathogen cauliflower mosaic virus. Tomato lines B, Da, and F were transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumefaciens.* The subject tomato lines also contain the bacterial neomycin phosphotransferase (*nptII*) gene that is used as a selectable marker.

The subject tomato lines are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences (vectors, promoters, and terminators) derived from plant pathogens. Tomato lines B, Da, and F were evaluated in field trials conducted under APHIS permits in l991, 1992, and 1993, and under APHIS notifications in 1994. In the process of reviewing the applications for those field trials, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive confinement, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of the subject tomato lines may be subject to regulation by the Food and Drug Administration (FDA) under the

authority of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*). The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Zeneca has notified the FDA that it has completed its food safety and nutritional assessment for the subject tomato lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioners, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Zeneca/Petoseed's tomato lines B, Da, and F and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa-150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 13th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6651 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Elsmere Canyon Proposed Solid Waste Management Facility

AGENCY: Forest Service, USDA.

ACTION: Revised date for end of comment period.

SUMMARY: The Angeles National Forest made available an Environmental Impact Statement for the Elsmere Canyon Proposed Solid Waste Management Facility on January 20, 1995. This was announced in the **Federal Register** / Vol. 60, No. 13 / Friday, January 20, 1995 by the Environmental Protection Agency, under the Environmental Impact Statements, Notice of Availability. The EIS No. is 950009, Draft EIS. The comment period was to end on April 28, 1995.

The Angeles National Forest has extended the comment period. Comments are due by close of business, August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Johnson, Deputy Forest Supervisor at 818–574–5217 or Charles McDonald at 818–574–5257 or written questions may be directed to the U.S. Forest Service, Elsmere EIS, 701 N. Santa Anita Ave., Arcadia, CA 91006.

Dated: March 10, 1995.

Paul Johnson,

Deputy Forest Supervisor.

[FR Doc. 95–6633 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

Beaver/Cedar Land Exchange; Clearwater National Forest; Clearwater and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental Impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Clearwater National Forest, with assistance from Potlatch Corporation, will prepare an EIS (environmental impact statement) for a proposal to exchange National Forest land for Potlatch owned land. The project area is located on the North Fork Ranger District on the Clearwater National Forest and the Palouse Ranger District on the St. Joe National Forest and administered by the Clearwater National Forest, head-quartered in Orofino, Idaho. The Agreement to Initiate a land exchange was signed by Potlatch Corporation on September 17, 1993, and the Forest Service on October 8, 1993. This exchange is proposed pursuant to the General Exchange Acts of March 1, 1911 and March 20, 1922, as amended, and the Federal Land Policy Management Act of October 21, 1976.

The EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final EIS of September, 1987, which provides overall guidance of all land management activities on the Clearwater National Forest. Analyses will also be conducted in compliance with the Stipulation of Dismissal agreed to for the lawsuit between the Forest Service and the Sierra Club, et al (signed September 13, 1993).

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received within 45 days following publication of this notice to receive timely consideration in the preparation of the Draft EIS. The Draft EIS is anticipated to be filed with the Environmental Protection Agency in August 1995. The Final EIS and Record of Decision are expected to be issued in December of 1995.

ADDRESSES: Submit written comments and suggestions on the proposed action or requests to be placed on the project mailing list to James L. Caswell, Forest Supervisor, Clearwater National Forest, 12730 U.S. Highway 12, Orofino, ID, 83544. FAX: 208–476–8329.

FOR FURTHER INFORMATION CONTACT: Bill Jones, Interdisciplinary Team Leader, Clearwater National Forest, Supervisor's Office, telephone (208) 476–4541.

SUPPLEMENTARY INFORMATION: Potlatch Corporation owns approximately thirty-seven sections of land, each containing approximately 640 acres, within the Cedars-Trout area of the North Fork Ranger District. These sections alternate with National Forest sections, and together they comprise what is referred to as a ''checkerboard'' area on the Clearwater National Forest. The majority of this area is unroaded and is adjacent to the Upper North Fork and Great Burn roadless areas. Large portions of the area were impacted by the 1910 burn and have returned to stands of lodgepole pine, where as, the unburned areas support stands of western redcedar, grand fir, Douglas-fir, western larch, Engelmann spruce, and subalpine fir. A good elk population inhabits the area, as do mule deer, white tail deer, moose, mountain lion, river otter, black bear, and maybe some mountain goats in the higher elevations. Fishing is excellent with an abundance of cutthroat trout and bull trout, with some brook trout in the smaller cold streams. The area contains the popular Cedars Campground and is adjacent to a lot of historic gold mining activity in Moose City and the surrounding country.

The Beaver Block, owned by the Forest Service, is characterized as an island of timber surrounded by cut-over private lands. It has a good gravel road

system and has been intensively managed since the 1940's. The area is very productive due to a good ash cap, that once supported large stands of western white pine. Western redcedar, grand fir, Douglas-fir, and minor amounts of Engelmann spruce, western white pine, ponderosa pine, and western larch now inhabit the area. The area provides excellent habitat for elk, and its rolling dissected topography is a favorite place for big-game hunters. Also present are moose, black bear, and white tail deer. Fishing is fair and is limited to brook trout in the South Fork of Beaver Creek. There is a lot of historic evidence of old logging cord wood roads and camp sites within the area.

The Clearwater Forest Plan provides guidance for land exchange within the potentially affected area through its goals, objectives, standards, guidelines and management area direction. The areas of proposed land exchange would occur mostly within Management Area E1. There are several inclusions of Management Area C4 within the Beaver Block area. Below is a brief description of the applicable management direction.

Management Area E1—Timber Management—Provide optimum, sustained production of timber products in a cost-effective manner while protecting soil and water quality. Lands Goal—Seek opportunities to consolidate land ownership through land exchange.

Management Area C4—Elk Winter Range/Timber—Provide sufficient winter forage and thermal cover for existing and projected big game populations while achieving timber production outputs. Lands Goal—Acquire private inholdings.

Initial negotiations began in 1985 with DAW Forest Products Company on a land exchange involving federal and non-federal parcels within the Cedars-Trout area. DAW later decided to get out of the area totally in favor of acquiring federal property on the Lolo National Forest to facilitate their mill in Superior, Montana. As this would take legislative action, DAW did not pursue this action and decided to not engage in a land exchange.

In January 1993, the Clearwater National Forest was approached by a local real estate representative wanting to know if the Forest would be interested in a land exchange involving DAW, the State of Idaho, and the Forest Service. Under this proposal, DAW would exchange their lands in the Cedars-Trout area to the State of Idaho for some State land near St. Maries, Idaho. The State would in turn exchange their newly acquired Cedars-Trout parcels for the federally owned Beaver Block. Before this proposal could be acted upon, all of the property owned by DAW went up for sale.

Later that year Potlatch Corporation informed the Forest that they were interested in purchasing the Cedars-Trout area from DAW, and asked if the Forest would be interested in a land exchange for the Beaver Block. On August 19, 1993, a letter was sent to Potlatch Corporation stating the Forest was interested in the exchange, but, with no guarantees that the exchange would be consummated. After some internal scoping, an Agreement to initiate was signed by both Potlatch Corporation and the Forest Service. Later in September, Potlatch Corporation and Bennett Lumber Company co-purchased the Cedars-Trout area as well as the other DAW owned lands on the Palouse Ranger District. Potlatch Corporation is currently giving Bennett Lumber Company some of their other land holdings in exchange for sole ownership of the newly acquired DAW lands.

As a result of internal scoping and negotiations with Potlatch, the following tracts are being proposed for exchange: Nonfederal Land (Property that Potlatch Corporation will consider exchanging)

Location	Acres	Total
T40N, R10E, Clearwater County, North Fork Ranger District:		
Sec 1 Lots 1–4, S½N½,S½ ...	.....	650.08
T40N, R11E, Clearwater County, North Fork Ranger District:		
Sec 1 Lots 1–4, S½NW¼, S½NE¼,S½ .	649.28	
Sec 3 Lots 1–4, S½N½,S½ ...	652.24	
Sec 4 Lots 2,4, S½NW¼, SW¼	368.27	
Sec 5 Lots 1–4, S½NW¼, S½NE¼,S½ .	650.08	
Sec 7 Lots 1,2, E½NW¼, NE¼,E½SE¼	388.49	
Sec 8 N½,W½SW¼	400.00	
Sec 9 all	640.00	
Sec 10 all	640.00	
Sec 11 all	640.00	
Sec 13 all	640.00	
Sec 14 all	640.00	
Sec 15 N½,SE¼, E½SW¼	560.00	
Sec 23 E½NE¼	080.00	
		6,948.36
T40N, R12E, Clearwater County, North Fork Ranger District:		
Sec 5 Lots 1–4, S½NW¼, S½NE¼,S½ .	648.88	
Sec 7 Lots 1–4, E½NW¼, E½SW¼,E½	618.80	
Sec 9 all	640.00	
Sec 17 all	640.00	
Sec 19 Lots 1,2, E½NW¼, NE¼,E½SE¼	390.48	
		2,938.16
T41N, R10E, Clearwater County, North Fork Ranger District:		
Sec 13 all	640.00	
Sec 23 all	640.00	
Sec 25 all	640.00	
Sec 27 all	640.00	
Sec 33 all	640.00	
Sec 35 all	640.00	
		3,840.00
T41N, R11E, Clearwater County, North Fork Ranger District:		
Sec 3 Lots 1–4, S½NW¼, S½NE¼,S½ .	644.04	
Sec 9 all	640.00	
Sec 11 all	640.00	
Sec 15 all	640.00	
Sec 17 all	640.00	
Sec 19 Lots 1–4, E½NW¼, E½SW¼,E½	631.36	
Sec 21 all	640.00	
Sec 23 all	640.00	
Sec 25 all	640.00	
Sec 28 SE¼SW¼, S½SE¼, NE¼SE¼	160.000	
Sec 29 all	640.00	
Sec 31 Lots 1–4, E½NW¼, E½SW¼,E½	638.00	
Sec 32 all	640.00	
Sec 33 all	640.00	
Sec 35 all	640.00	
		9,113.40
Subtotal acres in Cedars-Trout area ..	23,490.00	
Nonfederal Land in the Neva Hill Area		
T40N, R1E, Clearwater County, Palouse Ranger District:		
Sec 22 NE¼SE¼	.....	40.00

Location	Acres	Total
Nonfederal Land in the Elk Creek Drainage		
T39N, R2E, Clearwater County, Palouse Ranger District:		
Sec 11 SW¼SE¼	40.00	
Sec 14 E½, SE¼NW¼, E½SW¼, SW¼SW¼	480.00	
Sec 15 Lots 3,4, E½SW¼, NW¼SE¼, S½SE¼	279.08	
Sec 21 Lots 2,3,	86.10	
Sec 22 E½, NE¼SW¼, E½NW¼, NW¼NW¼ ...	480.00	
		1,365.18
Nonfederal Land in the Columbia Mine Area		
T42N, R1W, Latah County, Palouse Ranger District:		
Sec 7 Mineral Survey 3311 ..	34.09	
Sec 8 Mineral Survey 3311 ..	45.00	
		79.09
Nonfederal Land in the Mt. Gulch Area		
T43N, R1W, Latah County, Palouse Ranger District:		
Sec 31 Mineral Survey 2425	.....	56.62
Subtotal acres on Palouse Ranger District	1,540.89	
Total Nonfederal land for possible acquisition	25,030.89	
Outstanding Rights: Subject to the rights of the United States and third parties recited in the patent from the United States.		
Federal lands (Property the Forest Service Will Consider Exchanging)		
T40N, R6E, Clearwater County, North Fork Ranger District:		
Sec 31 Lots 1–4, E½W½, E½ .	633.96	
Sec 32 W½,SE¼, S½NE¼	560.00	
Sec 33 N½NE¼, NW¼SE¼, NW¼, N½SW¼, SE¼NE¼	400.00	
Sec 30 Lots 3,4, SE¼SW¼, SE¼SE¼	156.56	
		1,750.52
T39N, R6E, Clearwater County, North Fork Ranger District:		
Sec 4 Lots 3,4, S½NW¼, W½SW¼, SE¼SW¼	285.66	
Sec 5 Lots 1–4, S½NW¼, S½NE¼S½ ..	649.20	
Sec 6 Lots 1–7, SE¼NW¼, S½NE¼, E½SW¼, SE¼	638.49	
Sec 7 Lots 1–4, E½W½,E½ ..	637.20	
Sec 8 all	640.00	
Sec 9 W½NE¼, NW¼, N½SW¼, SW¼SW¼	360.00	
Sec 16 NW¼	160.00	
Sec 17 all	640.00	
Sec 18 Lots 1–4, E½W½, E½ .	637.64	
Sec 19 Lots 1–4, E½W½, E½ .	637.32	
Sec 20 N½, N½S½, SW¼SW¼, SE¼SE¼	560.00	
Sec 30 Lots 1–4, NE¼SW¼, E½NW¼, W½NE¼	358.72	
Sec 31 Lot 1	39.82	
		6,244.05
T39N, R5E, Clearwater County, North Fork Ranger District:		
Sec 1 Lots 1–4, S½NW¼, S½NE¼,S½ .	639.44	
Sec 2 Lots 1–4, S½NW¼, S½NE¼,S½ .	637.72	
Sec 11 NE¼, E½NW¼, SE¼, S½SW¼, NE¼SW¼	520.00	
Sec 12 all	640.00	
Sec 13 all	640.00	
Sec 14 all	640.00	
Sec 15 E½NE¼, SE¼, S½SW¼	320.00	
Sec 23 E½, NE¼NW¼	360.00	
Sec 24 all	640.00	
Sec 25 all	640.00	
Sec 26 all	640.00	
Sec 27 E½, S½SW¼, NE¼SW¼	440.00	
Sec 34 NW¼, N½NE¼, W½SW¼	320.00	
Sec 35 NE¼NE¼, S½SE¼, NW¼NE¼, N½NW¼, SE¼NW¼	280.00	
Sec 36 N½NE¼, W½,W½SE¼	480.00	
		7,837.16
Total Federal Acres Identified for Exchange	15,831.73	

Land reservations of the United States, exceptions to title and uses to be recognized.

A range of alternatives will be considered, including a no action alternative and the proposal identified above. Based on the issues identified through scoping, all action alternatives will vary in the number of acres to be exchanged, the location of the acres to be exchanged, and the kind of mitigation measures. Issues will drove the formulation of feasible alternatives, as will acceptance of each alternative by Potlatch Corporation and the Forest Service.

The EIS will analyze the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Comments from the public and other agencies will be used in preparation of the Draft EIS.

The scoping process will continue to be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Clearwater Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary issues identified as a result of internal and public scoping include: equal value of land being exchanged, plus, effects of the proposal on wildlife habitat, old growth habitat, water quality, riparian areas, fisheries, roadless areas, federal investigations already made, revenues to the counties, road access, deferred road maintenance, fire protection boundaries, timber program, visual quality of the area, recreation, and effects on threatened, endangered and sensitive species. This list will be verified, expanded and/or modified based on continued scoping for this proposal.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which starts with publication of this notice and continues for the next 45 days; and
2. Review of the Draft EIS in September and October, 1995.

The Forest Service expects to file the Draft EIS with the Environmental Protection Agency in August 1995. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Final EIS and Record of Decision are expected in December 1995.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS.

Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

I am the responsible official for this environmental impact statement. My address is Clearwater National Forest, Forest Supervisor's Office, 12730 Highway 12, Orofino, ID 83544.

Dated: March 8, 1995.

James L. Caswell,

Forest Supervisor.

[FR Doc. 95–6551 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

Nosiy Divide Timber Sale and Other Integrated Resource Projects, Colville National Forest, Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation Notice.

SUMMARY: The Forest Service, USDA, is no longer involved in the preparation of an environmental impact statement for the Noisy Divide Timber Sale and Other Integrated Resource Projects on the Sullivan Lake Ranger District of the Colville National Forest (Pend Oreille County, Washington). The Notice of Intent, published in the **Federal Register** on January 2, 1991 is hereby rescinded (56 FR 58).

FOR FURTHER INFORMATION CONTACT: Tim Bertram, Project Leader, Sullivan Lake Ranger District, Colville National Forest; at Metaline Falls, Washington 99153, or phone 509–446–2681.

Dated: March 7, 1995.

George T. Buckingham,

Acting Forest Supervisor.

[FR Doc. 95–6626 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

North Sherman and Fritz Timber Sales, Colville National Forest, Ferry County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber and to construct and reconstruct roads. The proposed projects will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (The Plan) which provides the overall guidance for management of this area for the next ten years. The projects are proposed within portions of the Sherman Creek and South Fork Sherman Creek drainages on the Kettle Falls Ranger District in fiscal year 1996. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal so as to provide interested and affected people awareness as to how they may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by April 30, 1995.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Meredith Webster, District Ranger, 225 W. 11th, Kettle Falls, Washington 99141.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Ralph Egan, Planning Assistant, 225 W. 11th, Kettle Falls, Washington 99141 (phone: 509–738–6111).

SUPPLEMENTARY INFORMATION: The proposed action includes harvesting timber and constructing roads on North Sherman and Fritz timber sales.

The timber sales are proposed within the Sherman Creek and South Fork Sherman Creek drainages on the Kettle Falls Ranger District. This analysis will evaluate a range of alternatives for implementation of the timber sales. The area being analyzed is 69,557 acres.

The North Sherman timber sale would be located north of Washington State Highway 20 with the proposed harvest centered between McGahee and Elbow Creeks. The majority of the harvest would be landscape scale selection harvest. The proposed sale would harvest 10.0 MMBF from 2,000 acres.

The Fritz timber sale would be located south of Washington State Highway 20 with the proposed harvest centered around upper Fritz Creek, Scalawag Ridge and Paradise Peak. The majority of the harvest would be landscape scale selection harvest. The proposed sale would harvest 10.0 MMBF from 2,000 acres.

The Draft EIS will be tiered to The Plan. The Plan's Management Area direction for this analysis area is approximately 4.1 percent Old Growth Dependent Species Habitat, 8.3 percent Recreation, 30 percent Scenic/Timber, 1.3 percent Scenic/Winter Range, 22.1

percent Wood/Forage, 5.3 percent Winter Range, 3.5 percent Semi-Primitive, Motorized Recreation, 19 percent Semi-Primitive, Non-Motorized Recreation and 6.4 percent other ownerships.

No harvest will be proposed within the Semi-Primitive, Motorized Recreation, Semi-Primitive, Non-Motorized Recreation Management Areas or other ownership areas. These areas are included only for analysis of effects. The proposed action includes portions of the Profanity, Bald Snow, South Huckleberry, and Bangs Roadless Areas which were considered but not selected for Wilderness designation.

Preliminary issues identified include: unroaded areas, recreation, sensitive plants and animals, visuals, water quality, timber production, and noxious weed control.

A range of alternatives will be considered, including a no-action alternative. Based on the issues gathered through scoping, alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatment prescribed, and (4) the number, type and location of other integrated resource projects.

Initial scoping began in March 1995. Scoping will include identifying issues, determining alternative driving issues, and identifying the objectives for the alternatives. An informal public meeting will be held at the Kettle Falls Ranger District office on April 18, 1995. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Tribes and individuals who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process. The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1995. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Tribes, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Colville National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by February 1996. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Edward L. Schultz, Forest Supervisor, is the Responsible Official. He will decide which, if any, of the alternative will be implemented. His decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR 215).

Dated: March 7, 1995.

George T. Buckingham,

Acting Forest Supervisor.

[FR Doc. 95–6627 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

First Creek Basin Restoration Project, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal for the First Creek Basin Restoration Project. The proposed action is partially located within the original Slide Ridge Roadless Area, approximately 15 miles northwest of the town of Chelan, in the First Creek, Baldy, and Granite Falls Creek drainages on the Chelan Ranger District of the Wenatchee National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for ecosystem restoration activities within the First Creek Basin. Alternatives may include fuel reduction activities, seeding, reforestation, slope stabilization, wildlife habitat restoration, stream channel stabilization, timber harvest, road/trail construction, and road/trail obliteration.

The alternatives will include a no action alternative, and at least one alternative that maintains the unroaded character of the proposed project area. Other alternatives will be designed to respond to relevant issues. The proposed project will be consistent with direction given in the Wenatchee National Forest Land and Resource Management Plan, as amended by the April 13, 1994, Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. This Forest Service proposal is scheduled for implementation in 1995–1997. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by April 28, 1995.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Al Murphy, District Ranger, Chelan Ranger District, PO Box 189, Chelan, Washington 98816.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Lisa Gowe or John Lampereur, Interdisciplinary Team Leaders, Chelan Ranger District, PO Box 189, Chelan, Washington 98816; phone 509–682–2576.

SUPPLEMENTARY INFORMATION: In the summer of 1994, part of the 135,000 acre Tyee Complex wildfire burned through the analysis area, leaving

thousands of acres of intensely-burned vegetation, altered soils, and increased fuel loads. The slopes in the area are steep and subject to severe erosion. This analysis was initiated to identify treatments that will lessen long-term losses in productivity and increase the rate of recovery of the ecosystems in the area. The analysis area is approximately 14,210 acres in size. About 280 acres of the area are unoccupied spotted owl habitat, with approximately 100 acres of this habitat being within a Late Successional Reserve. In addition, about 6,400 acres of the analysis area is unroaded.

The proposed action is to treat: (1) Approximately 4,700 acres in the ponderosa pine zone; (2) approximately 1,600 acres in the mesic Douglas-fir zone; and (3) approximately 340 acres in the high elevation zone. Treatments will be made through a combination of activities including: fuel disposal through the use of prescribed fire; harvest of dead and damaged trees; thinning; and slope stabilization. This proposal will include helicopter yarding as the preferred method of tree removal, but may require the construction of approximately 3 miles of temporary access roads. A transportation plan for the unroaded portion of the project area would also be developed.

To date, the following key issues have been identified:

Roadless Area management
Late Successional Reserves
Public safety and property
Economics
Cultural resources
Control of noxious weeds
Channel protection/restoration
Access management
Forest fuel management
Scenic quality
Recreation opportunities
Wildlife habitat
Revegetation
Water quality
Biodiversity/forest health
Fish/water/soil stability

The decision to be made through this analysis is where, how, and to what extent should the various vegetation management, fuels reduction and slope stabilization treatments be implemented within the First Creek analysis area, and what roading, if any, should occur within the currently unroaded area.

A range of alternatives will be considered, including a no action alternative, and an alternative that maintains the unroaded character of the area. Other alternatives will be developed in response to issues received during scoping. All alternatives will need to respond to specific conditions in the First Creek Basin.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, tribes, and local agencies, as well as individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating non significant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in June, 1995. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Wenatchee National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing those points).

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. (*City of Angoon v. Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986)) and (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed in August 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sonny O'Neal, Forest Supervisor, Wenatchee National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 215).

Dated: March 9, 1995.

Mark Morris,

Administrative Officer.

[FR Doc. 95–6628 Filed 3–16–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene from 1:00 p.m. until 6:00 p.m. on Thursday, April 6, 1995, at the Westin Hotel, Renaissance Center, Detroit, Michigan 48243. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Janice G. Frazier at 313–259–8180, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD

312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–6552 Filed 3–16–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–95]

Foreign-Trade Zone 24—Pittston, PA; Application for Subzone Status J. Schoeneman, Inc., Plant (Wearing Apparel), State Line, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting special-purpose subzone status for the apparel manufacturing plant of the J. Schoeneman, Inc. (JSI) (subsidiary of the Plaid Clothing Group, Inc.), located in State Line, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones (FTZ) Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 10, 1995.

This application involves the proposed transfer of subzone activity from JSI's plant (FTZ Subzone 99A) in Wilmington, Delaware, to JSI's new Pennsylvania plant. Subzone status for the company's Wilmington plant was authorized by the Board in 1984 (Subzone 99A; Board Order 257, 49 FR 24757, 6–15–84). The scope of FTZ authority for Subzone 99A is limited to non-manufacturing activity. JSI plans to close the Wilmington facility in 1995 and transfer the activity to its new plant in State Line, Pennsylvania. The activity at the proposed subzone would be the same as that now conducted at the Delaware plant, and no expansion of manufacturing authority is being requested.

The new JSI plant (10 acres, 126,000 sq. ft) is located at 15276 Molly Pitcher Highway (U.S. 11), State Line (Franklin County), Pennsylvania, some 6 miles north of Hagerstown, Maryland. The facility (120 employees) will be used to store, measure, and cut foreign and domestic fabric into tailored garment pieces that are shipped to other JSI plants for assembly into finished apparel (mens' and boys' suits, sport coats, raincoats, and trousers). Fabrics purchased from abroad (about 35% of total) include wool, silk, polyester, and polyester/wool (duty rates range up to 36.1%).

As is the case at the Delaware plant, FTZ procedures would exempt JSI from Customs duty payments on the foreign status fabric that is reexported from the proposed subzone. On domestic production, JSI would be able to defer duty payments on the foreign fabric until it is formally entered for consumption prior to cutting. No manufacturing would be conducted under FTZ procedures, and the same restrictions that are contained in Board Order 257 would apply at this plant. The application indicates that the savings from zone procedures will continue to help maintain the international competitiveness of JSI's domestic operations.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 16, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 31, 1995).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Harrisburg International Airport, Building 135, Second Floor, room 7, Middletown, PA 17057–5035

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230

Dated: March 13, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–6680 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–807]

Ceiling Fans From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On December 9, 1991, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on ceiling fans from the People's Republic of China (PRC). We are now revoking the order, based on the fact that this order is no longer of interest to domestic parties.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1991, the Department published in the **Federal Register** (56 FR 64249) an antidumping duty order on ceiling fans from the PRC (the order). On September 27, 1994, Lasko Metal Products, Inc. (Lasko), the petitioner in this proceeding, submitted a request for a changed circumstances administrative review and revocation of the order on the basis that the order no longer is of interest to the petitioner. On October 14, 1994, Lasko reaffirmed its September 27, 1994, request for the revocation of the order.

On January 17, 1995, the Department published in the **Federal Register** a notice of initiation and preliminary results of changed circumstances review to determine whether to revoke the order. (See Ceiling Fans from the People's Republic of China: Termination of Antidumping Duty Administrative Review, Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order, 60 FR 3390.) We found that Lasko's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. We gave

interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of the Review

Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation. Industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: A maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air delivery capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-mounted electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only—no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

This changed circumstances administrative review covers all manufacturers/exporters of ceiling fans from the PRC.

Final Results of Review; Revocation of Antidumping Duty Order

The affirmative statement of no interest by Lasko, the petitioner, constitutes changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the order on ceiling fans from the PRC in accordance with sections 751 (b) and (c) of the Tariff Act of 1930 (the Act) and 19 CFR 353.25(d)(1). This revocation applies to all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 5, 1991.

The Department will instruct the Customs Service to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 5, 1991. The Department will further instruct the Customs Service to refund with interest any estimated duties collected with respect to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 9, 1991, in accordance with section 778 of the Act.

This changed circumstances review, revocation of the antidumping duty order, and notice are in accordance with sections 751 (b) and (c) of the Act (19 U.S.C. 1675 (b) and (c)) and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: March 10, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–6681 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–811]

Steel Wire Rope From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 25 manufacturers/exporters of the subject merchandise to the United States. The review period is September 30, 1992, through February 28, 1994 (the POR).

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Davina Friedmann, Matthew Rosenbaum, or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1993, the Department published in the **Federal Register** (58 FR 16398) the antidumping duty order on steel wire rope from the Republic of Korea. On March 4, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 10368) of this antidumping duty order for the period September 30, 1992, through February 28, 1994. On March 14, 1994, the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, requested an administrative review for 25 manufacturers/exporters of steel wire rope from Korea.

We published a notice of initiation of the review on May 12, 1994 (59 FR 24683). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Unlocated Companies

We were unable to obtain addresses for Atlantic & Pacific, Dong-Il Metal, Dong Yong, Kwang Shin Industrial, and Seo Hae Industrial. In accordance with our practice with respect to companies to which we cannot send a questionnaire, we are assigning to these companies the ''All Others'' rate from the less-than-fair-value (LTFV) investigation, which is 1.51 percent. See Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong; Final Results of Antidumping Duty Administrative Review, 59 FR 13926 (March 24, 1994).

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and Customs purposes, our own written description of the scope of this review is dispositive.

United States Price

In calculating USP, the Department used purchase price as defined in section 772 of the Act, because the subject merchandise was sold to unrelated U.S. purchasers prior to importation and the exporter's sales price (ESP) methodology was not indicated by other circumstances.

Purchase price was based on ex-factory, f.o.b. Korea, f.o.b. customer's specific delivery point, c.i.f., c&f, or delivered prices to unrelated purchasers in, or for exportation to, the United States. We adjusted these prices for billing adjustments. We made adjustments, where applicable, for domestic brokerage and handling, ocean freight, marine insurance, terminal handling charges, stevedoring charges, wharfage expenses, bill of lading issuing fees, export license fees, export insurance, domestic inland freight, containerization expenses and container taxes, container freight station charges, and shoring charges in accordance with section 772(d)(2) of the Act. For certain companies we also deducted bank charges, postage fees, letter of credit advice charges, and delay charges when they were not reported separately from movement expenses. We also added duty drawback, where applicable, for Manho Rope and Wire, Ltd. (Manho), and Chun Kee Steel & Wire Rope Co., Ltd. (Chun Kee), pursuant to section 772(d)(1)(B) of the Act. We did not make any duty drawback adjustments for Chung Woo Rope Co., Ltd., Hanboo Wire Rope, Inc., Kumho Rope, Sung Jin Company, Ssang Yong Steel Wire Co., Ltd., and Yeonsin Metal, because they were unable to demonstrate a connection between imports for which they paid duties and exports of steel wire rope.

We adjusted USP for taxes in accordance with our practice as outlined in Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204 (June 17, 1994).

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of steel wire rope in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of steel wire rope to the volume of third-country sales of steel wire rope, in accordance with section 773(a)(1) of the Act and 19 CFR 353.48(a). Based on this comparison we determined that the home market was viable.

Because the Department disregarded certain of Manho's home market sales that were determined to have been made below the cost of production (COP) during the original investigation, the Department initiated a COP investigation of Manho for purposes of this administrative review, in accordance with section 773(b) of the Act and Department practice. See, *e.g.*, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand; Preliminary Results of Antidumping Duty Administrative Review, 56 FR 11195, 11196 (March 15, 1991). Furthermore, based on allegations by petitioner, we also determined that reasonable grounds existed to believe or suspect that Chun Kee and Boo Kook made sales below cost. Thus, we initiated COP investigations with respect to Chun Kee and Boo Kook. However, we are using best information available (BIA) for Boo Kook and are not calculating a specific rate for that company (see ''Best Information Available'' section below).

We calculated the COP for the merchandise using Manho's and Chun Kee's cost of manufacturing (COM) and general expenses, in accordance with section 353.51(c) of the Department's regulations (19 CFR 353.51(c)(1994)). Respondents' COM consisted of materials, labor, and factory overhead costs incurred in steel wire rope production. General expenses consisted of general and administrative expenses as well as net interest expenses normally included in general expenses for COP.

We performed a model-specific COP test, in which we examined whether each home market sale was priced below the merchandise's COP. The Department defines the COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing. See Stainless Steel Hollow Products From Sweden; Preliminary Results of Antidumping Duty Administrative Review, 59 FR 40521 (August 9, 1994). For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses. In accordance with section 773(b) of the Act, we also examined whether the home market sales of each model were made at prices below their COP in substantial quantities over an extended period of time. None of these companies submitted evidence that such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each model where less than 10 percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where 10 percent or more, but not more than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where more than 90 percent of the home market sales during the POR were priced below the COP and over an extended period of time, we disregarded all sales of the model from our calculation of FMV and used the constructed value (CV) of those models as described below. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Part Thereof From France, *et al.*; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Orders (in Part) 59 FR 9463 (February 28, 1994).

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which each product was sold below cost to the number of months during the POR in which each model was sold. If a product was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POR. We found certain of Manho's and Chun Kee's home market sales to be below the COP and excluded these sales.

For those models that had sufficient above-cost sales, we calculated FMV based on delivered prices and ex-factory prices to unrelated customers. In calculating FMV, we made adjustments, where appropriate, for rebates. Manho reported domestic pre-sale freight for certain sales. We consider pre-sale freight to be an indirect expense where respondent does not demonstrate that it is a direct expense. Therefore, since all of Manho's U.S. sales are purchase price sales, and 19 CFR 353.56(b)(1) (the commission offset provision) does not apply, we have not adjusted FMV for pre-sale freight. We adjusted for Korean value-added tax in accordance with our decision in Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204 (June 17, 1994). We deducted home market packing costs from the home market price and added U.S.

packing costs to the FMV. We also made adjustments, where applicable, for differences in the physical characteristics of merchandise.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments to FMV. We deducted home market credit expenses, inspection fees, domestic post-sale inland freight, warranty and servicing expenses and where appropriate, added U.S postage fees, U.S. letter of credit fees, U.S. bank charges, U.S. credit expenses, U.S. inspection fees, U.S. warranty and servicing expenses, and U.S. product liability insurance except where they were not reported separately from movement expenses. We used CV as FMV for those U.S. sales for which there were no contemporaneous sales of the comparison home market model or insufficient sales at or above the COP. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the COM of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit and U.S. packing. The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or 10 percent of the COM, the statutory minimum for general expenses. For home market profit, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of COM and general expenses. We deducted home market direct selling expenses and added U.S direct selling expenses to CV.

No other adjustments were claimed or allowed.

Best Information Available

In accordance with section 776(c) of the Act, we have preliminarily determined that the use of BIA is appropriate for certain firms.

In determining what to use as BIA, the Department employs a two-tiered methodology. The Department uses one method to determine the BIA margin for those respondents who cooperate in a review, while it uses a different method to determine the BIA margin for those respondents who do not cooperate, or who significantly impede the review.

In the case of uncooperative respondents, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the LTFV investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*, 58 FR 39729 (July 26, 1993)). When a company substantially cooperates with our requests for information, but fails to provide all information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the current review for any firm for the class or kind of merchandise from the same country.

Boo Kook submitted timely responses to our original and supplemental sales questionnaires. However, Boo Kook failed to respond to the COP questionnaire. Furthermore, several days before the scheduled verification, Boo Kook requested that we postpone our verification for 60 to 90 days. In its request for this delay, Boo Kook claimed that it had learned that several employees who have been indicted for embezzlement had destroyed many of the company's financial records, and that the remaining records were in police custody. Boo Kook requested the delay in verification in order to enable it to reconstruct its records for verification. Because postponement of the verification posed a substantial burden to the Department, we could not grant the requested delay, and thus we could not verify Boo Kook's response. Therefore, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate for Boo Kook. Because Boo Kook submitted timely responses to the Department's original and supplemental sales questionnaires, we determine Boo Kook to be a cooperative respondent. Accordingly, a margin of 2.72 percent, which is the highest calculated rate for this review, has been applied to Boo Kook.

We sent Dae Kyung and Myung Jin a questionnaire and received a confirmation of receipt through the United States Postal Service and the U.S. Embassy in Seoul, respectively. We did not receive a response from these two companies. Therefore we have considered these companies to be uncooperative respondents. Accordingly, a margin of 2.72 percent has been applied to Dae Kyung and Myung Jin, which is the highest calculated rate for this review.

We sent Dong-Il Steel Mfg. Co., Ltd. (Dong-Il), a questionnaire. It requested that it be excused from the review process because it no longer manufactures steel wire rope. We sent the company a letter explaining that it is responsible for responding to the questionnaire for any sales or shipments that occurred during the POR. However, the company did not respond to the questionnaire. Therefore, we have considered Dong-Il to be an uncooperative respondent. Accordingly, a margin of 2.72 percent has been applied to Dong-Il, which is the highest calculated rate for this review.

We sent Kwangshin Rope a questionnaire and three weeks after the due date received a response indicating that it was bankrupt. We rejected the response because it was untimely and had not been properly submitted or served. However, we sent Kwangshin Rope a supplemental questionnaire requesting clarification of its bankruptcy status. We did not receive a response. Therefore, we have considered Kwangshin Rope to be an uncooperative respondent. Accordingly, a margin of 2.72 percent has been applied to Kwangshin Rope, which is the highest calculated rate for this review.

We sent Seo Jin a questionnaire and received confirmation of receipt from the U.S. Embassy. One month after the deadline for the questionnaire response, we received a letter requesting an extension from Seo Jin. We denied this request because the request was untimely, was not served as required by our regulations, and was not filed in our Central Records Unit as required by our regulations. Therefore, we have considered Seo Jin to be an uncooperative respondent. Accordingly, a margin of 2.72 percent has been applied to Seo Jin, which is the highest calculated rate for this review.

Preliminary Results of Reviews

As a result of this review, we preliminarily determine that the following margins exist for the period September 30, 1992, through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Atlantic & Pacific	1.51
Boo Kook Corporation	2.72
Chun Kee Steel & Wire Rope Co., Ltd	2.72
Chung Woo Rope Co., Ltd	0.16
Dae Heung Industrial Co	(1)
Dae Kyung Metal	2.72
Dong-Il Metal	1.51
Dong-Il Steel Manufacturing Co., Ltd	2.72
Dong Young	1.51

Manufacturer/exporter	Margin (percent)
Hanboo Wire Rope, Inc	0.45
Jinyang Wire Rope, Inc	(1)
Korea Sangsa Co	(1)
Korope Co	(1)
Kumho Rope	0.07
Kwang Shin Ind	1.51
Kwangshin Rope	2.72
Manho Rope & Wire, Ltd	0.03
Myung Jin Co	2.72
Seo Hae Ind	1.51
Seo Jin Rope	2.72
Ssang Yong Steel Wire Co., Ltd	0.09
Sung Jin	0.04
Sungsan Special Steel Processing Inc	(1)
TSK (Korea) Co., Ltd	(1)
Yeonsin Metal	0.17

[1] No shipments or sales subject to this review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of the review (except that if the rate for a firm is *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 1.51 percent, the ''All Others'' rate established in the LTFV investigation (58 FR 11029).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: March 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6682 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 031095B]

Marine Mammals

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

ACTION: Request to export nonreleasable beached and stranded marine mammals (P583).

SUMMARY: Notice is hereby given that Shimoda Floating Aquarium, Fujita Tourist Enterprises Co., 3–22–31 Shimoda, Shizuoka 415, Japan, has requested authorization to export for public display purposes two nonreleasable beached and stranded California sea lions from a U.S. rehabilitation facility.

ADDRESSES: The request for authorization and related documents are available for review upon written request to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301/713–2289).

Relevant written comments about this request should be submitted to the above address April 17, 1995.

SUPPLEMENTARY INFORMATION: Shimoda Floating Aquarium, Fujita Tourist Enterprises Co., is requesting authorization for the export of two nonreleasable rehabilitated female California sea lions (*Zalophus californianus*) for the purpose of public display under the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*).

The permanent retention or export for public display purposes of a beached or stranded marine mammal taken for the purpose of rehabilitation under section 109(h) of the MMPA must be authorized by NMFS. Under the 1994 amendments to the MMPA, in order to obtain any marine mammal for public display purposes, the recipient must: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*; i.e., from the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (or, for foreign facilities, meet comparable standards); and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee.

In this regard, the required certifications and statements provided by Shimoda Floating Aquarium and the Japanese Fisheries Agency have been submitted to NMFS and APHIS, and have been found appropriate and sufficient to allow consideration of the request.

Dated: March 13, 1995.

Art Jeffers,

Acting Chief, Division of Permits and Documentation, National Marine Fisheries Service.

[FR Doc. 95–6666 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031095C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Request to export nonreleasable beached and stranded marine mammals (P582).

SUMMARY: Notice is hereby given that TOBA Aquarium, Toba 3–3–6 Toba City, Mie Prefecture, 517 Japan, has requested authorization to export nonreleasable beached/stranded marine mammals from the United States for the purpose of public display.

ADDRESSES: The request for authorization and related documents are available for review upon written request to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301/713–2289).

Relevant written comments about this request should be submitted to the above address by April 17, 1995.

SUPPLEMENTARY INFORMATION: TOBA Aquarium is requesting authorization for the export of five nonreleasable rehabilitated California sea lions (*Zalophus californianus*) for the purpose of public display under the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*).

The permanent retention or export for public display purposes of a beached or stranded marine mammal taken for the purpose of rehabilitation under section 109(h) of the MMPA must be authorized by NMFS. Under the 1994 amendments to the MMPA, in order to obtain any marine mammal for public display purposes, the recipient must: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*; i.e., from the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (or, for foreign facilities, meets comparable standards); and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee. In this regard, the required certifications and statements provided by TOBA Aquarium and the Japanese Fisheries Agency have been submitted to NMFS and APHIS, and have been found appropriate and sufficient to allow consideration of the request.

Dated: March 13, 1995.

Art Jeffers,

Acting Chief, Division of Permits & Documentation, National Marine Fisheries Service.

[FR Doc. 95–6664 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030995A]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will hold meetings during the week of April 17, 1995, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public, with the exception of an executive session to be held during the lunch hour 1 day during the meeting week to review personnel matters and pending litigation. Each meeting will continue until business is completed. All meetings will be held at the hotel and are scheduled as follows:

Council Advisory Panel and Scientific and Statistical Committee meetings will begin at 1:00 p.m., on April 17.

The Council meeting will begin at 1:00 p.m., on April 19, and is expected to continue through at least April 22, and possibly, April 23. There may be other workgroup and/or committee meetings held during the week. Notice of meetings will be posted and announced at the Council meeting. Time permitting, the Council will address, and may take appropriate action on, the following agenda items:

1. Reports from NMFS on the current status of fisheries and regulations, from the Alaska Department of Fish and Game on domestic fisheries, and from NMFS and the U.S. Coast Guard on enforcement and surveillance activities;

2. Final action on groundfish and crab license alternatives;

3. Initial review of analysis for continuation of inshore/offshore allocations and the pollock community development quota program;

4. Review proposed rule for the moratorium on groundfish and crab fisheries in the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI);

5. Receive a status report on the implementation of the Research Plan observer user fee program and review technical issues associated with the plan;

6. Receive legal opinion from NOAA General Counsel on the State of Alaska's authority over halibut management, and a staff report on progress for a regulatory amendment to control the amount of halibut taken by the charter industry;

7. Under the Sablefish and Halibut Individual Fishery Quota (IFQ) Program, the Council will receive a report from its Implementation Team, receive an issues paper on an early opening of the Aleutian Islands sablefish IFQ fishery, and receive a status report on several other pending amendments to the program;

8. Review information on oil and gas lease sale (MMS Sale 249) in Cook Inlet;

9. Bycatch, waste, and harvest priority: Receive discussion papers on improved retention and utilization; seasonal allocation of rock sole total allowable catch; and harvest priority, including a legal opinion on options being discussed for harvest priority;

10. Review Magnuson Act reauthorization proposals and approved amendments;

11. Review biological assessment and opinion for section 7 consultation for Snake River salmon, and receive a report on listing Steller sea lions as endangered, and a report on the status of seabirds;

12. Scallop management: Receive a status report on emergency closure; review draft fishery management plan, and information on crab bycatch and inclusion of scallop vessels in the observer plan;

13. Receive a report of the working panel for a grid sorting amendment to reduce halibut bycatch/mortality;

14. Initial review of an analysis of Bristol Bay red king crab closure and receive a report from the BSAI Crab and Groundfish Plan Teams on rebuilding crab fisheries;

15. Receive a report from the Salmon Research Foundation and take final action on chinook salmon bycatch amendment;

16. Review a proposed rule for the total weight measurement amendment;

17. Receive report on pollock trawl mesh studies;

18. Consider whether to adjust the GOA Pacific ocean perch (POP) rebuilding plan, and establish the total allowable catch for POP for 1995;

19. Consider apportioning pollock between midwater and bottom trawls.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: March 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–6663 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030695B]

Marine Mammals

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

ACTION: Receipt of application to modify permit no. 770 (P66G).

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game, Division of Wildlife Conservation, P.O. Box 25526, Juneau, Alaska 99802–5526, has requested a modification to permit no. 770.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 770, issued on March 20, 1992 (57 FR 10649), is requested under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 770 authorizes the permit holder to conduct scientific research on 200 harbor seals (*Phoca vitulina*) and 100 spotted seals (*Phoca largha*) over a 4-year period. The research includes capture, restraint, sampling, flipper tagging, and attaching satellite-linked platform transmitter terminals (PTTs) and/or VHF telemetry. The permit also authorizes the unintentional killing of up to 10 harbor seals and 5 spotted seals and the inadvertent harassment of up to 500 of each species.

The holder requests a further modification to this permit to take harbor seals in the following manner: (1) An additional 100 by capture, restraint, immobilization, sampling, and flipper tagging, and an additional 100 by unintentional harassment while conducting authorized activities; (2) obtain muscle biopsies from up to 50, inject deuterium oxide in up to 50, and inject Evans Blue solution in up to 50; (3) export samples from harbor seals and spotted seals specifically to Canada and The Netherlands and also on a worldwide basis as the need arises.

Dated: March 13, 1995.

Art Jeffers,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6665 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 17, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 28, December 9, 23, 1994, January 6, 13 and 20, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 54169, 63764, 66300, 60 FR 2083, 3196 and 4150) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Kit, Solar Power Installation
5340–01–176–4179

Microfiche of FAA Directives & Advisory Circulars
7690–00–NSH–0078

(Requirements for the Federal Aviation Administration)

Pad, Scouring
7920–00–841–7537
7920–01–162–6064

Holder, Scouring Pad
7920–01–222–7798

Services

Acquisition & Distribution of Batteries
(6135–00–643–1309)
(6135–00–643–1310)
(6135–00–826–4798)
(6135–00–900–2139)

Commissary Shelf Stocking and Custodial, Fort Polk, Louisiana

Janitorial/Custodial, Naval Postgraduate School, Annex, La Mesa Village, Golf Course Areas and Fort Ord Hospital, Monterey, California

Janitorial/Custodial, USARC Moore Hall, Salt Lake City, Utah
Medical Transcription, Department of Veterans Affairs, Dwight D. Eisenhower Medical Center, Leavenworth, Kansas

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–6635 Filed 3–16–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 17, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Gaiter, Neck
8440–01–387–8509
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland at its facility in Cumberland, MD

Services

Administrative Services, Department of Veterans Affairs Medical Center, 2300 Ramsay Street, Fayetteville, North Carolina
NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia
Janitorial/Custodial, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi
NPA: Allied Enterprises of Jackson, Jackson, Mississippi
Laundry Service, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, Florida
Recycling Service, Robins Air Force Base, Georgia
NPA: Houston County Association for Exceptional Citizens, Inc., Warner Robins, Georgia
Recycling Service, Naval Surface Warfare Center, Crane, Indiana
NPA: Stone Belt Council for Retarded Citizens, Inc., Bloomington, Indiana
Switchboard Operation, Department of Veterans Affairs Medical Center, 3601 South 6th Avenue, Tucson, Arizona
NPA: Tucson Association for the Blind & Visually Impaired, Tucson, Arizona
Switchboard Operation, Department of Veterans Affairs Medical Center, 2300 Ramsay Street, Fayetteville, North Carolina
NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–6636 Filed 3–16–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on March 30, 1995, beginning at 1:30 p.m. and lasting until 5:00 p.m. FPAC members will be meeting to discuss the international competitiveness of the U.S. derivatives industry and the adequacy of the current regulatory structure to meet the needs of U.S. futures exchanges and derivatives market participants vis-a-vis their foreign competitors.

The FPAC will discuss how possible changes in the regulatory framework could help or hinder U.S. competitiveness, including such issues as whether greater regulatory consolidation would ease regulatory burdens; whether increased regulatory oversight of OTC derivatives markets in the U.S. will create a competitive disadvantage for U.S. firms; and the relative strengths and weaknesses of product-based versus institution-based regulation to meet the long term needs of the U.S. derivatives industry. Representatives of key congressional committees have been invited to make presentations and participate in this discussion.

FPAC members will also discuss the strengths and weaknesses of conducting business in the U.S. as compared to other jurisdictions from the perspective of end-users, futures commission merchants, OTC derivative dealers, and managed funds. FPAC will also hear from exchange representatives regarding the competitive challenges created by the growth of foreign futures exchanges. Finally, FPAC will discuss prospects for the development of global standards for derivatives oversight, in the wake of the collapse of Barings PLC.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by

financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Kristyn H. Burnett, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Burnett in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on March 13, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6645 Filed 3–16–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission Investigative Hearings Schedule

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission *separate from and independent of DoD).*

ACTION: Notice of regional investigative hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces a series of regional investigative hearings to be held throughout the United States. The purpose of these hearings is for the Commission to receive testimony from communities that host military installations recommended for closure or realignment by the Secretary of Defense. The specific dates and locations follow:

March 29 (Location: Territory of Guam)

Regional hearing for testmony regarding the following installations:
- Fleet and Industrial Supply Center Guam
- Naval Air Station Agana Guam
- Naval Activities Guam
- Ship Repair Facility

March 30 (Location: Grand Forks ND)

Regional hearing for testimony regarding the following installations:
- Grand Forks Air Force Base ND
- Minot Air Force Base ND

March 31 (Location: Great Falls MT)

Regional hearing for testimony regarding the following installations:
- Fort Missoula MT
- Malmstrom Air Force Base MT

April 4 (Location: Birmingham AL)

Regional hearing for testimony regarding the following installations:
- Fort McClellan AL
- Reserve Center Huntsville AL
- Big Coppet Key FL
- Eglin Air Force Base FL
- Homestead Air Force Base FL
- MacDill Air Force Base FL
- Naval Air Station Cecil Field FL
- Naval Air Station Key West FL
- Naval Aviation Depot Pensacola FL
- Naval Research Lab & Naval Underwater Sound Reference Detachment FL
- Naval Training Center Orlando FL
- Nuclear Power Propulsion Training Center Orlando FL
- Defense Contract Management District South Marietta GA
- Robins Air Force Base GA
- Naval Biodynamics Lab New Orleans LA
- Reserve Center New Orleans (Region 10) LA
- Naval Technical Training Center Meridian MS
- Naval Air Station Meridian MS
- Fort Buchanan Puerto Rico
- Fleet and Industrial Supply Center Charleston SC
- Reserve Center Charlestown (Region 7) SC
- Defense Distribution Depot Memphis TN

April 12 (Location: Chicago IL)

Regional hearing for testimony regarding the following installations:
- Charles Melvin Price Support Center IL
- Savanna Army Depot Activity IL
- Naval Air Warfare Center Aircraft Division Indianapolis IN
- Reserve Center Olathe KS
- Naval Surface Warfare Center Crane Division Detachment Louisville KY
- Detroit Arsenal MI
- Naval Air Facility Detroit MI
- Reserve Center Cadillac MI
- Selfridge Army Garrison MI
- Aviation-Troop Command (ATCOM) MO
- Defense Contract Management Command International OH
- Defense Distribution Depot Columbus OH
- Springfield-Beckley Municipal Airport Air Guard Station OH
- Reserve Center Sheboygan WI

April 19 (Location: Dallas TX)

Regional hearing for testimony regarding the following installations:
- Fort Chaffee AR
- Tinker Air Force Base OK
- Bergstrom Air Reserve Base TX
- Brooks Air Force Base TX
- Defense Distribution Depot Red River TX
- Electronic Warfare Evaluation Simulator Activity Fort Worth TX
- Kelly Air Force Base TX
- Naval Air Station Corpus Christi TX
- Red River Army Depot TX
- Reese Air Force Base TX
- Reserve Center Laredo TX

April 20 (Location: Albuquerque NM)

Regional hearing for testimony regarding the following installations:
- Williams Air Force Base AZ
- Fitzsimons Army Medical Center CO
- Lowry Air Force Base CO
- Kirtland Air Force Base NM
- Defense Distribution Depot Ogden UT
- Dugway Proving Ground UT
- Hill Air Force Base UT

April 24 (Location: Delta Junction AK)

Regional hearing for testimony regarding the following installations:
- Fort Greely AK
- Naval Air Facility Adak AK

April 28–29 (Location: San Francisco CA)

Regional hearing for testimony regarding the following installations:
- Branch U.S. Disciplinary Barracks CA
- Camp Bonneville CA
- Defense Contract Management District West El Segundo CA
- East Fort Baker CA
- Fort Hunter Liggett CA
- Marine Corps Air Station El Toro CA
- Marine Corps Air Station Tustin CA
- McClellan Air Force Base CA
- Moffett Federal Airfield Air Guard Station CA
- Naval Command Control and Ocean Surveillance Center San Diego CA

Naval Health Research Center San Diego CA
Naval Personnel Research & Development Center San Diego CA
Naval Recruiting District San Diego CA
Naval Ship Yard Long Beach CA
Naval Training Center San Diego CA
North Highlands Air Guard Station CA
Onizuka Air Station CA
Ontario International Airport Air Guard Station CA
Reserve Center Pomona CA
Reserve Center Santa Ana Irvine CA
Reserve Center Stockton CA
Rio Vista Army Reserve Center CA
Sierra Army Depot CA
Supervisor of Shipbuilding Conversion and Repair Long Beach CA
Naval Air Station Barbers Point HI
Naval Undersea Warfare Center Keyport WA

May 4 (Location: Baltimore MD)

Regional hearing for testimony regarding the following installations:
Naval Recruiting Command DC
Naval Security Group Command Detachment Potomac DC
Army Bio-Medical Research Lab, Fort Detrick MD
Concepts Analysis Agency MD
Fort Meade MD
Fort Ritchie MD
Investigations Control and Automation Directorate Fort Holabird MD
Naval Medical Research Institute Bethesda MD
Naval Surface Warfare Center Carderock Division Detachment Annapolis MD
Naval Surface Warfare Center Dahlgren Division Detachment White Oak MD
Publications Distribution Center Baltimore MD
Recreation Center #2 NC
Charles E. Kelly Support Center PA
Defense Distribution Depot Letterkenny PA
Defense Industrial Supply Center Philadelphia PA
Fort Indiantown Gap PA
Greater Pittsburgh International Airport Air Reserve Station PA
Naval Command Control and Ocean Surveillance Center Warminster PA
Naval Air Technical Services Facility Philadelphia PA
Letterkenny Army Depot PA
Naval Air Warfare Center Aircraft Div Open Water Test Facility Oreland PA
Naval Shipyard Norfolk Detachment Philadelphia PA
Fort Lee VA
Fort Pickett VA
Information Systems Software Command (ISSC) VA
Naval Command Control and Ocean Surveillance Center In-Service Engineering East Coast Detachment Norfolk VA
Naval Information Systems Management Center Arlington, VA
Naval Management Systems Support Office Chesapeake VA
Naval Sea Systems Command Arlington VA
Office of Naval Research Arlington VA
Space and Naval Warfare Systems Command Arlington VA
Valley Grove Area Maintenance Support Activity WV

May 5 (Location: New York City)

Regional hearing for testimony regarding the following installations:
Naval Undersea Warfare Center Newport Division New London CT
Hingham Cohasset MA
Naval Air Station South Weymouth MA
Bayonne Military Ocean Terminal NJ
Bellmore Logistics Activity NJ
Camp Kilmer NJ
Camp Pedricktown NJ
Caven Point Reserve Center NJ
Fort Dix NJ
Naval Air Warfare Center Aircraft Division Lakehurst NJ
Fort Hamilton NY
Fort Totten NY
Griffiss Air Force Base NY
Real-Time Digitally Controlled Analyzer Processor Activity Buffalo NY
Reserve Center Staten Island NY
Rome Laboratory NY
Roslyn Air Guard Station NY
Seneca Army Depot NY
Stratford Army Engine Plant CT
Sudbury Training Annex MA

Each hearing will begin at 9:00 a.m. and will be open to the public. The building and/or room number are noted in parentheses following the date of each hearing. However, hearing locations, dates, and times are subject to change based upon availability of facilities.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504.

SUPPLEMENTARY INFORMATION: The Commission will publish changes to the above schedule in the **Federal Register**. Please call the Commission point of contact to confirm dates, times, and locations prior to each event. Individuals needing special assistance should contact the Commission in advance of each event to facilitate their requirements.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6559 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces.

The Commission is charged with providing an independent review of the roles and missions of the armed services to Congress, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. The year-long review will identify changes that can be made to improve military effectiveness and eliminate unnecessary duplication among the services. The purpose of this meeting is to discuss some of the specific roles and missions issues that are being developed for consideration by the Commission. Material to be discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–453, as amended (5 U.S.C. App II), it has been determined that this Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, this meeting will be closed to the public.

DATES: March 20, 1995.

SUPPLEMENTARY INFORMATION: Extraordinary circumstances compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: March 14, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6622 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile

ACTION: Notice of meeting.

SUMMARY: The first meeting of this committee will be held on March 30, 1995, at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA. The meeting is open to the public. This committee was established under Public Law 102–484. The agenda for the meeting is as follows:

8:30 a.m.: Briefings to the committee members on National Defense Stockpile issues
11:30 a.m.: Luncheon
1:00 p.m.: Member's discussion of scope of work and committee structure
4:00 p.m.: Adjourn.

For additional information contact Mr. Tom Meeker at 703–607–3203.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6560 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Defense Acquisition Reform, Phase III

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform, Phase III will meet in open session on March 29 and May 16, 1995 at the Pentagon, Room 3E869, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Jay Dutcher at (703) 697–5384.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6556 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on March 27, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issue dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Aapp. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly this meeting will be closed to the public.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6557 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on C–17 Review, Phase II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on C–17 Review, Phase II will meet in closed session on March 27, 1995 at Wright-Patterson Air Force Base, Ohio.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the current status of the C–17 program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–6558 Filed 3–16–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2535–003—GA]

South Carolina Electric & Gas Co.; Notice of Availability of Draft Environmental Assessment

March 13, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Stevens Creek Hydroelectric Project, located on the Savannah River near Augusta, Georgia; in Columbia County, Georgia; and Edgefield and McCormick Counties, South Carolina; and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's office's at 941 North Capitol Street N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426. Please affix ''Stevens Creek Hydroelectric Project No. 2535'' to all comments. For further information, please contact John Blair at (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6586 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2306–016]

Citizens Utilities Co.; Notice of Amendment To Application

March 13, 1995.

On February 9, 1995, Citizens Utilities (Applicant) filed an application to amend its application for new license for the Clyde River Project, FERC No. 2306–016.

The Applicant is proposing to (1) remove the Newport No. 11 dam and

buttress wall, (2) permanently stabilize the Newport No. 11 right abutment embankment, and (3) repower the No. 11 powerhouse through construction of an eight-foot-diameter pipe and draft tube extension from Project No. 2306's upstream Newport Nos. 1, 2, 3, powerhouse.

The project as originally proposed, and the project with dam No. 11 removed, have been addressed in the Draft Environmental Impact Statement for the Clyde River Project issued February 17, 1995. However, we were not aware when that document was issued that the Applicant was preparing to amend its application. Thus, we are providing an opportunity for additional interventions and for entities to reconsider their terms, conditions, prescriptions and comments submitted previously with respect to this application. Comments and/or petitions for intervention will be due 30 days from the date of issuance of this notice with response comments due 45 days from the date of issuance.

Copies of the application and amendment are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Citizens Utilities Company, Citizens Road, Newport, VT 05855, or by calling (802) 334–6539. The applicant contact for this project is Mr. Frank W. Thomas.

Contact Ms. Kathleen Sherman at (202) 219–2834 for questions relating to this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6585 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA94–1–23–005 and TA95–1–23–001]

Eastern Shore Natural Gas Co.; Notice of Request for Conference on Proposed Settlement

March 13, 1995.

Take notice that on March 1, 1995, Eastern Shore Natural Gas Company (Eastern Shore), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (1994), filed an offer of settlement in the captioned proceedings.

As part of the offer, Eastern Shore requests that the Commission convene a settlement conference to consider the offer of settlement and postpone the due dates for comments and reply comments until after the settlement conference.

Eastern Shore states that the offer of settlement has three interdependent parts. Article I provides that Eastern Shore will change its PGA methodology from unit-of-purchase to unit-of-sales and will allocate purchased gas demand costs on the basis of contract demand entitlements. If that change is approved, Article II provides that Eastern Shore will reduce its purchased gas demand base tariff rates immediately upon the effective date of the Commission's approval. Eastern Shore would not be required to make any refunds pursuant to the May 19, 1994 order in Docket No. TA94–1–23–000, *et al.*, and would withdraw its request for rehearing of that order. Article III provides that Eastern Shore will apply to the Commission for a blanket certificate authorizing open-access transportation on its system, pursuant to 18 CFR Part 284, Subpart G.

Eastern Shore states that copies of the proposed settlement and request for settlement conference have been served on all participants on the official service lists for the captioned proceedings and on interested state commissions who were served copies of the initial rate filings in these proceedings.

Any person desiring to be heard at the conference or to comment upon the procedures suggested in the request for settlement conference to consider the offer of settlement should file a motion to intervene or comment with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. All such motions or comments should be filed on or before March 21, 1995. Existing parties need not file a motion to intervene, but 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. 95–6587 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–250–000]

NorAm Gas Transmission Co.; Notice of Application

March 13, 1995.

Take notice that on March 8, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–250–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon the Collinson Gas Storage Facility (Collinson), located in Cowley County, Kansas, and the reclassification of the field lines and surface equipment from gas storage to gas supply facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT states that Collinson consists of 720 acres and appurtenant equipment used to store natural gas at a depth of approximately 1,450 feet. NGT further states that at Collinson there are two field lines consisting of 1,654 feet of six-inch pipe and 923 feet of four-inch pipe, that connect two injection/withdrawal wells that were drilled in 1945. NGT indicates that it acquired Collinson from Consolidated Gas Utilities Corporation (Consolidated) by merger effective August 31, 1960, and received certificate authorization in Docket No. CP60–79. NGT further indicates that in 1991, it upgraded its Line 6 which enabled NGT to provide service to existing customers without the need to operate Collinson. NGT avers that on September 30, 1994, it abandoned Line 6 as part of the Kansas facilities sold to Utilcorp United, Inc. (Utilcorp), as approved by the Commission on September 28, 1994, in Docket Nos. CP93–434–000 and CP93–434–001. NGT estimates the volume of gas presently in Collinson is 847 MMcf non-current ''native'' or ''cushion'' gas.

NGT states that upon receipt of the appropriate abandonment authorization, it proposes to install a temporary 65 horsepower skid-mounted compressor at the Collinson yard to withdraw the non-current gas at an estimated initial rate of 2,000 Mcf per day until the deliverability declines to an estimated economic limit of 50 Mcf per day. NGT indicates it will install this compressor as an eligible facility pursuant to § 157.208(a) of the Commission's regulations. NGT estimates that it can recover 300 MMcf to 750 MMcf of non-current gas over a period of one to three years, at an estimated annual operating cost of $36,000. NGT further indicates that gas wells can unpredictably produce for prolonged periods at rates less than 100 Mcf per day. NGT further states that although the economic limit is estimated to be reached within three years, NGT plans to produce the wells until the economic limit of the wells is reached.

NGT indicates it will use the gas it recovers from Collinson as part of its system management gas and accounted at fair market basis. NGT states that at

the end of this withdrawal period, it proposes to abandon the two wells at an estimated cost of $37,000. NGT estimates the cost of removing all the field lines and appurtenant surface equipment at $95,685.

Any person desiring to be heard or to make protest with reference to said application should on or before April 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition 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 protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition 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 on this application if no petition to intervene is file within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition 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 NGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6584 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–4721–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 13, 1995 through February 17, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1995 (59 FR 16807).

Draft EISs

ERP No. D-COE-C39009–NY Rating EC2, Atlantic Coast of Long Island Jones Inlet to East Rockaway Inlet Storm Damage Reduction Project, Construction, Long Beach Island, Nassau County, NY.

Summary: EPA expressed environmental concerns about the potential cumulative impacts associated with this and other erosion/storm damage protection projects on Long Island and requested that additional information be presented in the final EIS.

ERP No. D-COE-K32047–CA Rating EC2, Humboldt Harbor and Bay (Deepening) Channels, Feasibility Study for Navigation Improvements, Humboldt County, CA.

SUMMARY: EPA expressed environmental concerns that the draft EIS did not analyze the no action alternative and that more information concerning both management of the unsuitable dredged material and monitoring of the disposal site was needed.

ERP No. D-FHW-B40080–MA Rating EC2, US 6 Transportation Improvements Project, between the Towns of Dennis and Orleans on Cape Cod, Funding, Coast Guard Bridge Permit and COE Section 10 and 404 Permits, Barnstable County, MA.

Summary: EPA expressed environmental concerns about the expansion of Cape Cod's Route 6 from two to four lanes between the Towns of Dennis and Orleans as proposed in the draft EIS. The project would cause direct adverse effects on the water supplies and wetlands of several towns as well as indirect environmental effects through induced growth and traffic on the Outer Cape. In keeping with the goal of the Cape Cod Commission's long range transportation plan for Cape Cod—to reduce reliance on the automobile and encourage alternative transportation modes—EPA recommended that the FHWA aggressively pursue multimodal solutions and make improvements to the existing roadway.

Final EISs

ERP No. F-FHW-C40125–NY, Northern State Parkway Widening Project, Construction from Meadowbrook State Parkway Interchange to Wantagh State Parkway Interchange, Funding, Town of North Hempstead, Nassau County, NY.

Summary: EPA believed that the proposed project will not result in significant adverse environmental impacts; therefore, EPA had no objections to its implementation.

ERP No. F-FHW-E40744–NC, US 421 Highway Improvements, East of Secondary Road 2433 to West of I–77, Funding and Possible COE Section 404 Permit, Wilkes and Yadkin Cos., NC.

Summary: EPA expressed environmental concerns that the selected alignment was not the most environmentally sound option to meet the project's objectives.

Dated: March 14, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–6677 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4721–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed March 06, 1995 Through March 10, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950074, FINAL EIS, BLM, MT, Big Dry Land and Resource Management Plan, Implementation, Miles City District, several counties, MT, Due: April 17, 1995, Contact: James Beavers (406) 255–2918.

EIS No. 950075, DRAFT SUPPLEMENT, AFS, AK, Bohemia Mountain Timber Sale, Updated Information concerning Resolution of Three Appeal Issues Regarding Harvesting Timber, Tongass National Forest, Stikine Area, AK, Due: May 01, 1995, Contact: David E. Helmick (907) 772–3841.

EIS No. 950076, FINAL EIS, FRC, MN, St. Louis River Basin Hydroelectric Projects, Issuing New Licenses for FERC Projects, Cloquet NO. 2363 and St. Louis River No. 2360, St. Louis and Carlton Counties, MN, Due: April 17, 1995, Contact: John S. Blair (202) 219–2845.

EIS No. 950077, DRAFT EIS, FHW, NC, Wilmington Bypass Transportation Improvement Program, Construction

from I–40 to US 421, Funding, NPDES, US Coast Guard Permit, COE Section 10 and 404 Permit, New Hanover County, NC, Due: May 01, 1995, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950078, FINAL EIS, FHW, WA, Stillaguamish River Bridges WA–9/132 (Haller) and WA–530/120 (Lincoln) Bridge Replacement Project, Improvements, Funding, COE Section 404 Permit and Right-of-Way Acquisition, City of Arlington, Snohomish County, WA, Due: April 17, 1995, Contact: Dale Morimoto (206) 440–4548.

EIS No. 950079, DRAFT EIS, FHW, MT, US 93 Highway Transportation Project, Improvements between Evaro and Polson, Funding and COE Section 404 Permit, Missoula and Lake Counties, MT, Due: May 08, 1995, Contact: Joe Marshik (406) 444–6394.

EIS No. 950080, DRAFT SUPPLEMENT, DOE, WA, ID, NM, NV, MT, UT, OR, CA, AZ, WY, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and Wildlife Activities, Updated and New Information, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia, Due: May 01, 1995, Contact: Charles Alton (503) 230–3403.

EIS No. 950081, DRAFT EIS DOE, TX, ID, NV, TN, SC, Programmatic EIS—Tritium Supply and Recycling Facilities Siting, Construction and Operation, Implementation, Idaho National Engineering Laboratory, ID; Nevada Test Site, NV; Oak Ridge Reservation, TN; Pantex Plant, TX or Savannah River Site, SC, Due: May 15, 1995, Contact: Alfred W. Feldt (202) 586–5449.

EIS No. 950082, DRAFT EIS, AFS, PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR, Due: June 16, 1995, Contact: Pablo Cruz (809) 766–5335.

EIS No. 950083, FINAL EIS, AFS, ID, Boise River Wildfire Recovery Project, Implementation, North Fork Boise River and Mores Creek Drainages, Boise National Forest, Idaho City and Mountain Home Ranger Districts, Boise and Elmore Counties, ID, Due: May 01, 1995, Contact: Terry Padilla (208) 364–4330.

EIS No. 950084, FINAL EIS, NPS, NY, Hamilton Grange National Memorial, General Management Plan, Implementation, New York County, NY, Due: May 01, 1995, Contact: Georgette Nelms (212) 264–4456.

EIS No. 950085, DRAFT EIS, AFS, ID, Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID, Due: May 01, 1995, Contact: Steve Patterson (208) 364–7400.

EIS No. 950086, DRAFT EIS, FHW, WA, WA–3/WA–304 Bremerton Ferry Terminal to the vicinity of Gorst Highway Improvement Project, Implementation, Funding, Right-of-Way Grant, NPDES Permit and COE Section 404 Permit, City of Bremerton, Kitsap County, WA, Due: May 08, 1995, Contact: Jim Leonard (206) 753–2120.

EIS No. 950087, DRAFT SUPPLEMENT, NOA, Western 1995 Atlantic Bluefin Tuna Fishery, Regulation Amendment, Updated Information, Implementation, Due: May 01, 1995, Contact: Rolland Schmitten (301) 713–2239.

EIS No. 950088, DRAFT EIS, DOE, WA, Columbia Wind Farm #1 Project, Construction and Operation of a 25 Megawatt (MW) Wind Power Project in the Columbia Hills Area, Conditional-Use-Permit, NPDES Permit and COE Section 404 Permit, Klickitat County, WA, Due: May 01, 1995, Contact: Kathy Fisher (509) 773–5703.

EIS No. 950089, DRAFT EIS, DOE, SC, Savannah River Site Interim Management of Nuclear Materials, Implementation, Aiken and Barnwell County, SC, Due: May 01, 1995, Contact: Arthur B. Gould (800) 242–8269.

EIS No. 950090, FINAL EIS, EPA, ID, Adoption—Stone Cabin Open Pit Gold and Silver Mine Development and Operation, National Pollutant Discharge Elimination Permit, Issuance, Florida Mountain, Boise District, Owyhee County, ID, Contact: Sally Brough (206) 553–1295.

The US Environmental Protection Agency has adopted the US Department of the Interior, Bureau of Land Management's final EIS filed on 8–12–94. EPA was a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary Under Section 1506.3(c) of the Council on Environmental Quality Regulations.

Dated: March 14, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–6678 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

National City Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to merge with United Bancorp of Kentucky, Inc., Lexington, Kentucky, and thereby indirectly acquire The First State Bank and Trust Company, Manchester, Kentucky; The London Bank & Trust Company, London, Kentucky; Bank of Danville and Trust Company, Danville, Kentucky; The First National Bank and Trust Company, Nicholasville, Kentucky; Richmond Bank and Trust Company, Richmond, Kentucky, and First National Bank & Trust Company of Woodford County, Versailles, Kentucky.

In connection with this application, Applicant also has applied to acquire American Fidelity Bank, FSB, Harian, Kentucky, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Bancorp, Gainesville, Georgia; to acquire FF Bancorp, Inc., New Smyrna Beach, Florida, and Key Bancshares, Inc., Tampa, Florida, and thereby indirectly acquire The Key Bank of Florida, Tampa, Florida.

In connection with this application, Applicant also has applied to acquire First Federal Savings Bank of New Smyrna, New Smyrna Beach, Florida, and First Federal Savings Bank of Citrus County, Inverness, Florida, and thereby engage in operating savings associations, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Florida.

Board of Governors of the Federal Reserve System, March 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6619 Filed 3–16–95; 8:45 am]

BILLING CODE 6210–01–F

Ohio Heritage Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 10, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Ohio Heritage Bancorp, Inc., Coshocton, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Ohio Heritage Bank, Coshocton, Ohio, a *de novo* bank in formation.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. New Central Illinois Financial Co., Inc., Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of BankIllinois Financial Co., Champaign, Illinois, and thereby indirectly acquire BankIllinois, Champaign, Illinois; and Central Illinois Financial Corporation, Champaign, Illinois, and thereby indirectly acquire The Champaign National Bank, Champaign, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Pleasant Hope Bancshares, Inc., Pleasant Hope, Missouri; to acquire 8.57 percent of the voting shares of Premier Bancshares, Inc., Jefferson City, Missouri, and thereby indirectly acquire Premier Bank, Jefferson City, Missouri.

In connection with this application, Premier Bancshares, Inc., Jefferson City, Missouri; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Jefferson City, Missouri.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security Richland Bancorporation, Miles City, Montana; to acquire 100 percent of the voting shares of FirstWest Bank, Billings, Montana.

Board of Governors of the Federal Reserve System, March 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6620 Filed 3–16–95; 8:45 am]

BILLING CODE 6210–01–F

Pointe Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pointe Financial Corporation, Boca Raton, Florida; to engage *de novo* through its subsidiary Pointe Financial

Services, Inc., Boca Raton, Florida, in making and servicing loans, and performing mortgage processing functions for third parties, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Union Bancorporation, Defiance, Iowa; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to engage *de novo* through its subsidiary St. Louis Business Development Fund, St. Louis, Missouri, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6621 Filed 3–16–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and date: Full Committee Meeting, May 2–3, 1995, 9:00 a.m.–5:00 p.m.

Place: Georgetown Child Development Center, 3307 ''M'' Street, NW.—Suite 401, Washington, DC 20007.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: The Committee plans to discuss critical issues concerning Federal policy, Federal research and demonstration, State policy collaboration, minority and cultural diversity and mission and public awareness.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for citizens with mental retardation, and reviewing legislative proposals that affect persons with mental retardation.

Contact person for more information: Gary H. Blumenthal, Wilbur J. Cohen Building, Room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001, (202) 619–0634.

Dated: March 10, 1995.

Gary H. Blumenthal,

Executive Director, PCMR.

[FR Doc. 95–6546 Filed 3–16–95; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of April 1995:

Name: Health Care Policy and Research Special Emphasis Panel

Date and time: April 13, 1995, 9:30 a.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, 6th Floor Conference Room, Rockville, MD 20852.

Open session April 13, 9:30 a.m. to 10 a.m.

Closed for remainder of meeting.

Purpose: This panel is charged with conducting the initial review of grant applications on research related to care for persons with acquired immune deficiency syndrome (AIDS) and other related human immunodeficiency virus (HIV) diseases.

Agenda: The open session of the meeting on April 13 from 9:30 a.m. to 10 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing grant applications dealing with (1) cost and financing of HIV/AIDS treatments and services; (2) organization and delivery of services; (3) characteristics and interactions of providers and patients; (4) comorbidity; and (5) special populations. In accordance with the Federal Advisory Committee Act, 5 U.S.C., Appendix 2 and 5 U.C.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 602, Rockville, Maryland 20852, Telephone (301) 594–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 13, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–6613 Filed 3–16–95; 8:45 am]

BILLING CODE 4160–90–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS. The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New Collection;
Title of Information Collection: Medicaid Drug Rebate—Remittance Advice Report;
Form No.: HCFA–304;
Use: The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with HCFA for States to receive funding for drugs dispensed to Medicaid recipients. The regulations at 42 CFR 447.534 and 447.536 require manufacturers to report specific drug rebate information to States when payment is made;
Respondents: Business or other for profit;
Number of Respondents: 482;
Total Annual Responses: 1,928;
Total Annual Hours Requested: 116,896.

2. *Type of Request:* Reinstatement;
Title of Information Collection: Termination of Enrollment Regulation—BPD–306;
Form No.: HCFA–141;
Use: The termination of enrollment requirement allows States, through contracts with Federally Qualified Health Maintenance Organizations (HMO) and certain other managed care contracts to restrict disenrollment from an HMO up to a 6-month period. However, Medicaid beneficiaries are allowed to disenroll during the period for good cause;
Respondents: Business or other for profit, State or local government;
Number of Respondents: 60,214;
Total Annual Responses: 1;
Total Annual Hours Requested: 15,054.

3. *Type of Request:* Reinstatement;
Title of Information Collection: Information Collection Requirement at

42 CFR 447.53(d) Imposition of Cost Sharing Charges Under Medicaid (BERC–509);

Form No.: HCFA–R53;

Use: The information collection requirement at 42 CFR 447.53(d) requires the States to include in their Medicaid State plan their provisions for imposition of cost sharing on the medically and categorically needy;

Respondents: State or local government;

Number of Respondents: 54;

Total Annual Responses: 54;

Total Annual Hours Requested: 2,700.

4. Type of Request: Reinstatement;

Title of Information Collection: Medicare Current Beneficiary Survey—Community Component Supplement PR: ''Sources Of Information About Medicare'';

Form No.: HCFA–P–0015A;

Use: This supplement is intended to find out from a systematic sample of Medicare beneficiaries, how they obtain information about program rules and procedures when they need it. It also elicits their opinion of the adequacy of the information they found, and alternative means by which HCFA might provide this information;

Respondents: Individuals and households;

Number of Respondents: 12,000;

Total Annual Responses: 12,000;

Total Annual Hours Requested: 2,000.

5. *Type of Request:* Reinstatement;

Title of Information Collection: Application for Hospital Insurance;

Form No.: HCFA–18;

Use: This form is used to establish entitlement to Hospital Insurance and Supplementary Medical Insurance for beneficiaries covered under only title XVIII of the Social Security Act;

Respondents: Business or other for profit, Federal Government, State or local government, farms, individuals and households;

Number of Respondents: 50,000;

Total Annual Responses: 50,000;

Total Annual Hours Requested: 12,500.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 7, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–6553 Filed 3–16–95; 8:45 am]

BILLING CODE 4120–03–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 6 and 7, 1995, 9 a.m., Holiday Inn—Gaithersburg, Whetston and Walker Rooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, April 6, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; open public hearing, April 7, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m., Cornelia B. Rooks, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Hotline, 1–800–741–8138, (301–443–0572 in the Washington, DC area), Clinical Chemistry and Clinical Toxicology Devices Panel, code 12514.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 30, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 6, 1995, the committee will discuss a premarket approval application for a fetal fibronectin enzyme immunoassay which is to be used in symptomatic women as an aid in the prediction of impending preterm delivery. On April 7, 1995, the committee will discuss a group of 510(k) applications pertaining to sweat patch collection of drugs of abuse and their measurement. The collection devices are intended for use by professionals in drug treatment programs.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. April 10, 1995, 8 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or

FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Pulmonary-Allergy Drugs Advisory Committee, code 12545.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 24, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application (NDA) 20–471, Abbott Laboratories, Leutrol (zileuton) as an anti-asthmatic drug.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. April 10, 11, and 12, 1995, 9 a.m., Parklawn Bldg., conference room G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 10, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, April 11, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, April 12, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before April 5, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will continue with its discussion begun during the December 5 and 7, 1994, meeting on developing general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products. The subcommittee will also begin discussion on the safety and effectiveness of the ingredients stannous fluoride, zinc citrate, peppermint oil, and sage oil for antiplaque and antiplaque-related uses.

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 20, 1995, 8 a.m., Corporate Bldg., Main Conference Room, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations are available at the Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; Harry R. Sauberman, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ear, Nose, and Throat Devices Panel, code 12522. If anyone who is planning to attend the meeting will need any special assistance as defined under the Americans with Disabilities Act, please notify the contact person above.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 10, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a supplement to a premarket approval application that seeks to expand the indication for use for an approved cochlear implant device to include postlinguistically hearing-impaired adults who demonstrate severe-to-profound hearing loss and who obtain some minimal benefit from conventional amplification. The discussion will include the review of clinical data obtained with the use of various speech processors.

National Mammography Quality Assurance Advisory Committee

Date, time, and place. April 24, 1995, 10 a.m., and April 25 and 26, 1995, 9 a.m., Dupont Plaza Hotel, 1500 New Hampshire Ave. NW., Washington, DC. A limited number of overnight accommodations have been reserved at the Dupont Plaza Hotel. Attendees requiring overnight accommodations may contact the hotel at 202–483–6000 and reference the FDA Committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open committee discussion, April 24, 1995, 10 a.m. to 3 p.m.; open subcommittee discussions, 3 p.m. to 5 p.m.; open subcommittee discussions, April 25, 1995, 9 a.m. to 5 p.m.; open

public hearing, April 26, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 18, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 24 and 26, 1995, the committee will discuss: (1) The development of three working groups (i.e., subcommittees) to consider access to mammography services, physicists availability, and cost benefit of compliance; (2) the Congressional reports and determinations mandated in the Mammography Quality Standards Act (the MQSA); (3) the work of the subcommittees; and (4) a briefing on inspections to date.

Open subcommittee discussions. On April 24 and 25, 1995, the three subcommittees will meet concurrently. The subcommittees will discuss preliminary information which is necessary to make the determinations and subsequently prepare the reports as mandated in the MQSA. Upon completion, the subcommittee reports will be reviewed by the committee prior to submission to the Secretary and Congress.

Subcommittees of the National Task Force on AIDS Drug Development

Date, time, and place. April 25, 1995, 8:30 a.m.; April 26, 1995, 10 a.m.; Salons 1, 2, and 3, Congressional Ballroom; Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open subcommittee discussion, April 25, 1995, 8:30 a.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; open subcommittee discussions, April 26, 1995, 10 a.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; Jean H. McKay or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Task Force on AIDS Drug Development, code 12602.

General function of the task force. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The four subcommittees of the task force will meet to discuss barriers related to the identification of specific drug targets and solutions to these barriers in preparation for the next full meeting of the task force. Members of the subcommittees, Federal government, and the public will participate in these discussions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before April 19, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

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 13, 1995.

Lireka P. Joseph,

Acting Deputy Commissioner for Operations.

[FR Doc. 95–6692 Filed 3–16–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Cancer Institute for April and May 1995.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice and for the review of concepts being considered for funding. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and 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 proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide a summary of the meetings and the roster of committee members, upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the Executive Secretary/Scientific Review Administrator listed for that particular meeting.

Committee name: Cancer Centers and Research Programs Review Committee—Subcommittee D.

Contact person: Dr. John W. Abrell, Scientific Review Administrator, National Cancer Institute, Bldg. EPN, Room 635B, 6130 Executive Blvd MSC 7405, Bethesda, MD 20892–7405, Telephone: (301) 496–9767.

Date of meeting: April 11–12, 1995.

Place of meeting: The Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Closed: 8 am to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee name: Biometry and Epidemiology Contract Review Committee.

Contact person: Dr. Harvey P. Stein, Scientific Review Administrator, National Cancer Institute, Bldg. EPN, Room 601C, 6130 Executive Blvd MSC 7405, Bethesda, MD 20892–7405, Telephone: (301) 496–7030.

Date of meeting: April 12–13, 1995.

Place of meeting: Conference Room G, 6130 Executive Blvd., Rockville, MD 20852.

Closed: 9 am to adjournment.

Agenda: Review, discussion and evaluation of individual contract proposals.

Committee name: Acrylonitrile Study Advisory Panel.

Contact person: Dr. Aaron Blair, Executive Secretary, National Cancer Institute, 6130 Executive Blvd., Room 418, Rockville, MD 20852, Telephone: (301) 496–9093.

Date of meeting: May 3, 1995.

Place of meeting: Conference Rooms 1 & 2, 6100 Executive Blvd., Rockville, MD 20852.

Open: 10 am to adjournment.

Agenda: Review and discussion of study progress.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6570 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Council on April 6, 1995. The meeting will take place from 1 p.m. to 4 p.m. in Conference Room 9, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which is open to the public, will be held to discuss changes in the scientific field of hearing and hearing impairment since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the hearing and hearing impairment section of the Research Plan. Attendance by the public will be limited to the space available.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Mr. Baldwin Wong, Program Analyst, National Institute on Deafness and Other Communication Disorders, Building 31, Room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Wong in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6569 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; 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 National Institute of Dental Research Special Emphasis Panel (SEP) meetings.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Perio. Complications of Diabetes.

Dates: April 13, 1995.

Time: 9:00 a.m.

Place: Natcher Building, NIH, Conf. Center A.

Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Sensor for High Resolution (Teleconference).

Dates: April 17, 1995.

Time: 11:00 a.m..
Place: Natcher Building, NIH, Conf. Rm. 4AS–10.
Contact Person: Dr. H. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel–R03, Special Small Grants.
Dates: April 18, 1995.
Time: 11:00 a.m.
Place: Natcher Building, NIH, Conf. Rm. 4AS–10.
Contact Person: Dr. H. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision 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 fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6567 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 26–28, 1995, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

The meeting will be open to the public on April 26 from 7 p.m. to 7:30 p.m. for discussions of policies of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 26 from 7:30 p.m. to 10 p.m.; April 27 from 8:30 a.m. to 6 p.m. and on April 28 from 9 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigations, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request, by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A07, Bethesda, Maryland 20892.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, prior to the meeting.

(Catalog of Federal Domestic Assistance Program No 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6565 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on April 20–21, 1995.

The meeting of April 21 will be open to the public from 9 a.m. to 3 p.m. in the Board Room of the Library, 8600 Rockville Pike, Bethesda, Maryland, for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 20 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on April 21, from 3 p.m. to approximately 5 p.m., in the Board Room of the National Library of Medicine, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: March 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6568 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

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: April 3, 1995.
Time: 8:30 a.m.
Place: Hyatt Regency, Bethesda, MD.
Contact person: Dr. Scott Osborne, Scientific Review Administrator, 5333 Westbard Ave., Room 203C, Bethesda, MD 20892 (301) 594–7060.

Name of SEP: Clinical Sciences.
Date: April 3, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 203C, Telephone Conference.
Contact person: Dr. Scott Osborne, Scientific Review Administrator, 5333 Westbard Ave., Room 203C, Bethesda, MD 20892 (301) 594–7060.

Name of SEP: Clinical Sciences.
Date: April 3, 1995.
Time: 3 p.m.
Place: NIH, Westwood Building, Room 203C, Telephone Conference.
Contact person: Dr. Scott Osborne, Scientific Review Administrator, 5333 Westbard Ave., Room 203C, Bethesda, MD 20892 (301) 594–7060.

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 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–6566 Filed 3–16–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–7100.

The following requests have been submitted for review since the list was last published on Friday, February 24.

1. Reporting Requirements for Federal Maternal and Child Health Set-Aside Programs—42 CFR PART 51(A)—0915–0169 (Reinstatement, with change)—Approval is requested for forms and regulations to implement amendments to 42 USC 706(A)(3) made by OBRA '89. The amendments require information from SPRANS and CISS projects to be reported annually to Congress on numbers of persons served or trained, evaluations performed, and Healthy Children 2000 objectives addressed. Respondents: Not-for-profit institutions; businesses or other for-profit; State, Local or Tribal Government; Number of Respondents: 580; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 1,160 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

2. National Exposure Registry—0923–0006 (Reinstatement, no change)—Authorized under the Superfund mandate, this information collection is undertaken in order to develop the National Exposure Registry. Its purpose is to collect information on the health of persons exposed to a defined substance at a specific site. Respondents are individuals working or residing near sites identified by ATSDR as containing substances of specific health concern. Respondents: Individuals or households; Number of Respondents: 15,167; Number of Responses per Respondent: 1; Average Burden per Response: 0.42 hours; Estimated Annual Burden: 6320 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

3. Cosmetic Product Experience Reports—CFR Part 730—0910–0047 (Extension, no change)—Experience data, when correlated with cosmetic product ingredient data, gives FDA scientists valuable insight into potentially unsafe cosmetic ingredients, thereby improving FDA's ability to accomplish its mission of protecting consumers from injuries resulting from harmful ingredients in cosmetics. Respondents: Businesses or other for-profit; Number of Respondents: 125; Number of Responses per Respondent: 1 form FDA–2706 @ 1 hour and 16 forms FDA–2704 @ .2 hours each); Average Burden per Response: 4.2 hours; Estimated Annual Burden: 525 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: March 14, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–6637 Filed 3–16–95; 8:45 am]

BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Single Source Grant to CODAC Behavioral Health Services of Pima County, Inc.

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of intent to award a single source demonstration grant to support a comprehensive outpatient treatment and prevention program for substance-abusing mothers and their infants in Pima County, Arizona.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public concerning a planned single source grant award to CODAC Behavioral Health Services of Pima County, Inc. This is not a formal request for applications. Assistance will be provided only to CODAC Behavioral Health Services of Pima County, Inc., based on the receipt of a satisfactory application that is approved by a peer review group and the CSAT National Advisory Council.

Authority/Justification

The grant will be made under the authority of Section 510(b)(1) of the Public Health Service Act, as amended.

An award is being made on a single source basis because the Conference Report to the Treasury/Postal Service and General Appropriations Act of 1995, Pub. L. 103–329, provides directive language that the appropriation includes $500,000 for CSAT to support CODAC Behavioral Health Services of Pima County, Inc., for ''a comprehensive treatment and prevention program for substance-abusing mothers and their infants.'' Providing assistance through a grant is the appropriate mechanism to fund this activity because it is our intent to provide support for a public purpose and agency involvement in the actual conduct of the activity is not required. The grant is subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Background

Scientific evidence indicates that certain individuals are at greater risk of disease, dysfunction and death as a consequence of alcohol and other drug use and abuse. Women, and in particular, pregnant and postpartum women, their infants and children who live at or near the poverty line, are among the most vulnerable of these. For them, substance use/abuse, chemical dependency, and the biological, psychiatric, psychological and socio-economic co-factors of substance abuse (herein referred to as ''alcohol and other drug problems'') may be severe. Unfortunately, the treatment infrastructure has not kept pace with the demand or complexity of need in response to the serious problem of

maternal alcohol and other drug use/abuse and the resulting complications experienced by this population. When women do seek treatment they often face strained substance abuse treatment agencies that lack the capacity, financial resources, or appropriate family-centered approaches to effectively meet the multiple treatment needs of women and their children. Few treatment agencies have the capability to provide all services required to meet the needs of this population, such as treatment for critical health and mental health problems and injuries resulting from histories of physical and sexual abuse; child care and development; parenting skills development; and child abuse and neglect prevention. Both residential and outpatient treatment services specifically designed for women are necessary to ensure that the full range of services is available. This is necessary because the needs and circumstances of clients can vary considerably. Some women are unwilling or unable to enter residential treatment; outpatient treatment is therefore the most appropriate option for them. Some residential programs have a combination of residential and outpatient care designed as part of their treatment approach, and for some programs, outpatient services are available as part of required or voluntary continuing care.

CODAC has offered substance abuse treatment, prevention and general mental health services in Pima County for 25 years, during which time it has become a nationally-known center for provision of residential and outpatient substance abuse treatment services for women and their children. CODAC targets women in the criminal justice system, ethnic minority women, and low-income women, all high-risk groups according to the Office of National Drug Control Policy. The majority of women served by CODAC are between 19 and 24 years of age, approximately 2% are African American, 30% Latino, 60% Caucasian, 1% Native American and 7% other (including multiracial).

CODAC has also initiated comprehensive residential treatment and prevention services to substance abusing mothers and their infants, under Section 508 of the Public Health Services Act, CSAT's Services Grant Program for Pregnant and Postpartum Women (PPW). The residential services are complemented by outpatient case management and treatment referral services funded by the Center for Substance Abuse Prevention (CSAP) since 1990. The CSAP project (Comprehensive Assistance to Mothers & Infants Outpatient Program Expansion—CAMI) comprises a wide range of services, including ensuring that the women receive prenatal care, education/job development, and housing.

Funding for CAMI is due to expire April 30, 1995. Among CAMI's innovations in outpatient prevention and treatment have been early detection and screening of infants and children (and referral for services as necessary), parenting training, outreach to difficult to reach target populations, and follow-up of clients post-treatment. From February 1991 to June 1994, CAMI has served 249 women, 153 infants and approximately 200 children. Of the 40 women who had been in treatment and are presently involved in 6 month post-treatment reevaluations, 79% have abstained from use of all drugs except tobacco (72% continue to smoke). Importantly, clients in CAMI have demonstrated a significant decrease in drug use during the second trimester of pregnancy. This reduces the probability of perinatal effects of drug use and therefore the costs of medical and associated care.

Providing continuing support for CAMI under the CSAT PPW program helps to ensure linkage between the residential and follow-up phases of treatment and thereby improve the likelihood of sustained recovery for the discharged mothers and their children as well as for women to enter the outpatient program only. This will, in turn, result in positive, wide-ranging impact on the Tucson community.

This grant will support comprehensive outpatient services to mothers and their infants, including:

(1) Outpatient substance abuse treatment;

(2) Expanded outreach to women not yet engaged in treatment;

(3) Coordination of services for women enrolled in the PPW program, including continuing care (aftercare) services;

(4) Expanding treatment, psychological counseling and educational groups tailored specifically to the needs of women in treatment;

(5) Expanding the wellness component and strengthening its linkage with the PPW residential program;

(6) Expanding the mentoring program;

(7) Provision of child care services for women enrolled only in the outpatient program; and

(8) Expanded prevention services directed toward at-risk populations.

This grant is consistent with the State of Arizona drug abuse treatment plan. Providing funding to CODAC under this grant will help ensure that the prevention and treatment approaches devised and implemented by CODAC can continue to serve as models for programs serving women and their children throughout the country.

The project will be funded for one year in the amount of approximately $500,000.

The Catalog of Federal Domestic Assistance number for this program is 93.101.

FOR FURTHER INFORMATION CONTACT: Maggie Wilmore, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–8160.

Dated: March 13, 1995.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–6612 Filed 3–16–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings

and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: March 10, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/17/95

Suitable/Available Properties

Buildings (by State)

California

VA Triangular Parcel
1401 Sepulveda Blvd.
Los Angeles Co: Los Angeles CA
Landholding Agency: GSA
Property Number: 549510003
Status: Surplus
Comment: 2904 sq. ft., 1-story bldg. on 2.13 acres, fair condition, possible asbestos
GSA Number: 9–G–CA–514K

Florida

Federal Building
435 Brevard Avenue
Cocoa Co: Brevard FL 32922–
Landholding Agency: GSA
Property Number: 549510001
Status: Excess
Comment: 4768 sq. ft., 2-story, average condition, repairs needed to roof and air conditioning system, to be vacated late summer of 1995.
GSA Number: 4–G–FL–971

Michigan

Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland;
1265 St.Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 549510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/95
GSA Number: 2–L–MI–757

New Mexico

Hornkohl Property
Petroglyph National Monument
Albuquerque Co: Bernalillo NM 87120–
Landholding Agency: Interior
Property Number: 619510001
Status: Excess
Comment: 1-story wood frame residence, needs rehab, off-site use only

North Carolina

Federal Bldg.—Post Office
226 Carthage Street
Sanford Co: Lee NC 27330–
Landholding Agency: GSA
Property Number: 549440013
Status: Excess
Comment: 5195 sq. ft., 2 story brick frame, water damage in basement, existing lease for 88% of building, most recent use office/storage, restriction—admin. office activities only.
GSA Number: 4–G–NC–713

North Dakota

46 Bldgs.
Former Fortuna Air Force Station Co: Divide ND 58844–
Location: 4 miles west of Fortuna, 60 miles north of Williston, ND of Hwy. 50; Includes Bldg. 1–2, 4–5, 7–8, 10–24, 26–28, 30–32, 35–36, 38–46, 50, 52, 56–57, 98–100, Bldgs. 37 & 55 are unavailable
Landholding Agency: GSA
Property Number: 549440009
Status: Surplus
Comment: various square feet, incs. dining halls, ofcr. qtrs., rec facilities, dorms, clinic, supply bldgs., commissary, warehouses, fire hose houses, needs rehab
GSA Number: 7–D–ND–466A

66 Bldgs.
Former Fortuna Air Force Station Co: Divide ND 58844–
Location: 4 miles west of Fortuna, 60 miles north of Williston, ND on Hwy. 50; Include Bldgs. 47–49, 51, 61–62, 101–107, 110–116, 118, 122–129, 141–145, 201–218, 223–229, 912 (Bldgs. 117, 119–121, 221 & 222 are unavailable)
Landholding Agency: GSA
Property Number: 549440010
Status: Surplus
Comment: Various square feet, includes family housing, fire hose housing, some w/attached or detached garages, relocatable family housing
GSA Number: 7–D–ND–466B

Bldg. 300 on 5.51 Acres
Former Fortuna Air Force Station Co: Divide ND 58844–
Location: 4 miles west of Fortuna, 60 miles north of Williston, ND on Hwy. 50

Landholding Agency: GSA
Property Number: 549440011
Status: Surplus
Comment: 2730 sq. ft., include communications receiver bldg.
GSA Number: 7–D–ND–466C

Suitable/Unavailable Properties

Land (by State)

North Carolina

PHS, N.I.E.H.S.
Alexander Drive
RTP Co: Durham NC 27709–
Landholding Agency: GSA
Property Number: 549440012
Status: Excess
Comment: 4.995 acres, existing building construction restrictions
GSA Number: 4–F–NC–709

Washington

Colfax Substation
Boneville Power Administration Co: Whitman WA
Location: South of the Washington water power switch yard
Landholding Agency: Energy
Property Number: 419430001
Status: Unutilized
Comment: 2.99 acres of land

Unsuitable Properties

Buildings (by State)

Florida

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 879510009
Status: Unutilized
Reason: Secured Area, Floodway

Oregon

Pump Building
Marine Safety Office
Portland Co: Multnomoha OR 97217–
Landholding Agency: DOT
Property Number: 879510010
Status: Excess
Reason: Extensive deterioration.

[FR Doc. 95–6463 Filed 3–16–95; 8:45 am]

BILLING CODE 4210–29–M

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3800; FR–3649–N–04]

Announcement of Funding Awards for the Youth Apprenticeship Program—FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Public Housing agencies applicants under the Youth Apprenticeship Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Paula Blunt, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone number (202) 708–4214. (This is not a toll free number). Hearing or speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program.

SUPPLEMENTARY INFORMATION: The Youth Apprenticeship Program is funded under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (Pub. L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act).

The purpose of the Youth Apprenticeship Program is to further the Department's commitment to providing apprenticeship and employment opportunities to youth living in public and assisted housing, in partnership with Youth Corps and joint labor-management initiatives designed to focus on job training and employment opportunities leading to self-sufficiency. These Youth Apprenticeship grants will enable Public Housing agencies to assist Youth Corps and labor-management supported training, apprenticeship, and employment to youths living in public and assisted housing in HOPE VI communities. Recipients were chosen in a competition under selection criteria announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on August 18, 1994 (59 FR 42740).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101- 235, approved December 15, 1989) the Department is publishing the names and addresses of the Public Housing agencies which received funding under this NOFA, and the amount awarded to each. This information is provided in Appendix A to this document.

Dated: March 13, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—LIST OF AWARDEES FOR THE YOUTH APPRENTICESHIP PROGRAM FY 1994

Name and address	Grant amount
Housing Authority of the City of Atlanta, 739 West Peachtree Street, N.E., Atlanta, GA 30365, (404) 817–7203, Contact: Renee L. Glover	$1,178,571
Housing Authority of the City of Baltimore, 417 E. Fayette Street, Suite 1346, P.O. Box 1917, Baltimore, MD 21202, (410) 396–3232 Contact: Daniel P. Henson III	1,178,571
Cuyahoga Metropolitan Housing Authority, 1441 West 25th Street, Cleveland, Ohio 44113, (216) 348–5911, Contact: Claire E. Freeman	1,178,571
Housing Authority of the City of Los Angeles, 2600 Wilshire Boulevard, Los Angeles, CA 90057, (213) 484–5637, Contact: Donald J. Smith	1,178,571
Housing Authority of the City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202, (414) 223–5900, Contact: Richardo Diaz	1,178,571
Housing Authority of the City of Seattle, 120 Sixth Avenue North, Seattle, WA 98109–5003, (206) 615–3340, Contact: David Gilmore	1,178,571
San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102, (415) 554–1297, Contact: Ted Dienstfrey	1,178,571

[FR Doc. 95–6669 Filed 3–16–95; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–799387

Applicant: Kootenai Tribe of Idaho, Fisheries Program, Bonners Ferry, Idaho

The applicant requests a permit to take (capture, collect, PIT tag, radio tag, mark, surgically sex, release, and sacrifice) the Kootenai River population of the white sturgeon (*Acipenser trasmontanus*) in the Kootenai River, Idaho for scientific research to enhance the propagation and survival of the species.

Permit No. PRT–798017

Applicant: Habitat Restoration Group, Felton, California

The applicant requests a permit to take (capture and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in Santa Cruz and Monterey Counties, California to determine the presence/absence of the species for the purpose of enhancing its survival.

Permit No. PRT–799491

Applicant: Dale T. Steele, Stockton, CA

The applicant requests a permit to take (survey, collect hair samples, and radio-tag) the Point Arena mountain beaver (*Aplodontia rufa nigra*) in Mendocino County, California for scientific research to enhance the survival of the species.

Permit No. PRT–799489

Applicant: Frances R. Taylor, Las Vegas, NV

The applicant requests a permit to take (collect) up to 200 Pahrump poolfish (*Empetrichthys latos*) from the Spring Mountain Ranch refuge pond for captive propagation to obtain life history information on spawning ecology, water temperature preference, critical thermal minimum and maximums, substrate preference, and age and growth data to enhance the propagation and survival of the species.

Permit No. PRT–799486

Applicant: Janet A. Randall, San Francisco, CA

The applicant requests a permit to take (capture, tag, release, and play taped foot drumming recordings) the giant kangaroo rat (*Dipodomys ingens*) in San Luis Obispo and Kern Counties, California for biological and behavorial studies to enhance the propagation and survival of the species.

Permit No. PRT–799495

Applicant: Roger D. Gambs, San Luis Obispo, CA

The applicant requests a permit to take (capture, mark, measure, weigh, and release) the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in San Luis Obispo County, California to conduct presence/absence surveys to enhance the survival of the species. These activities were previously authorized under the Regional Director's permit no. PRT–702631.

Permit No. PRT–793638

Applicant: Ramona Swenson, El Cerrito, California

The applicant requests a permit to take (capture, release, and sacrifice voucher specimens) the tidewater goby (*Eucyclogobius newberryi*) throughout the range of the species in California to conduct presence/absence surveys and population monitoring to enhance the survival of the species.

Permit No. PRT–799570

Applicant: Carol W. Witham, Davis, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–768251

Applicant: Biosearch Wildlife Surveys, Santa Cruz, California

The applicant requests amendment of their permit to include take (collect and release) of the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California while conducting ecological studies on co-occurring species for the purpose of enhancing species survival.

Permit No. PRT–799569

Applicant: Renee Y. Owens, San Marcos, California

The applicant requests a permit to take (harass by nest monitoring) the least Bell's vireo (*Vireo bellii pusillus*) in San Diego and Orange counties, California to monitor nest success and remove brown headed cowbird eggs/nestlings for the purpose of enhancing species survival.

Permit No. PRT–799566

Applicant: John G. Coy, Bellevue, Washington

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799564

Applicant: Sycamore Environmental Consultants, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus wootoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799561

Applicant: Entrix Incorporated, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (Streptocephalus wootoni), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799546

Applicant: Wymer and Associates, Citrus Heights, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus wootoni*), and vernal pool tadpole shrimp

(*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–797230

Applicant: Sacramento-Yolo Mosquito and Vector Control District, Elk Grove, California

The applicant requests amendment of their permit to include take (harass by survey, collect and sacrifice voucher specimens) of the conservancy fairy shrimp (*Branchinecta conservatio*) in vernal pools in Sacramento County, California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799555

Applicant: Beak Consultants Incorporated, Sacramento, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing species survival.

Permit No. PRT–799551

Applicant: Bryan M. Mori, Watsonville, California

The applicant requests amendment of their permit to include take (collect and release) of the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California while conducting ecological studies on co-occurring species for the purpose of enhancing species survival.

Permit No. PRT–799558

Applicant: Idaho Power Company, Boise, Idaho

The applicant requests a permit to take (collect, release, sacrifice voucher specimens) the Snake River (*physa snail (Physa natricina*), the Idaho springsnail (*Fontelicella idahoensis*), the Utah valvata snail (*Valvata utahensis*), and the Banbury Springs Limpet (*Lanx n. sp.*) in the Snake River, Idaho, and its tributaries between (and including) river mile 589.3 and river mile 553.0 to determine presence or absence of the species and to various life history and ecological studies on the species for the purpose of enhancing species survival.

Permit No. PRT–781377

Applicant: San Marino Environmental Consultants, San Marino, California

The applicant requests amendment of their permit to include take (harass by survey, collect, handle, release, and sacrifice voucher specimens) of the tidewater goby (*Eucylogobius newberryi*) throughout its range in California to determine presence or absence, and take (harass by survey, collect, handle, and release) of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in San Bernardino County, California, to determine presence or absence and monitor populations for the purpose of enhancing species survival.

DATES: Written comments on the permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 9, 1995.

William F. Shake,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–6629 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–P

Notice of Meetings

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.A. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.A. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 3 p.m. to 5 p.m. on Sunday, April 2, 1995, and from 7 p.m. to 8 p.m. on Wednesday, April 5, 1995. Within this time period, other meetings may be announced. Meeting announcements will be posted at the administrative office for the Pacific Fishey Management Council (within the same hotel).

ADDRESSES: The meeting on April 2, 1995, will be held in the Rogue Room and the meeting on April 5, 1995, will be held in the Klamath Room. Both rooms are at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda item will be to refine fishery harvest options for the 1995 ocean salmon harvest management into recommendations to the Pacific Fishery Management Council. For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: March 13, 1995.

H. Dale Hall,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–6630 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–044–1040–00]

Call for Gila Box Advisory Committee Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions on the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to Title 2, Section 201, of the Arizona Desert Wilderness Act of 1990.

The purpose of the Advisory Committee is to provide informed advice to the Safford District Manager on management of public lands in the Gila Box Riparian National Conservation Area. Members are currently assisting BLM with the selection of a preferred alternative for

the Final Gila Box Interdisciplinary Activity Plan. The Advisory Committee meets as needed, generally between two to four times per year. Members serve without salary, but are reimbursed for travel and per diem expenses at current rates for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. The categories of expertise for this nomination period include wildlife conservation, riparian ecology, hydrology, environmental education, or other related disciplines.

Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide names, addresses, professions, biographical data, and category of expertise for qualified nominees. Persons selected to serve on the Committee will serve a three-year term ending on July 31, 1998. Nominations should be submitted to the Safford District Manager at the address below.

DATES: Nominations must be received by April 28, 1995.

ADDRESSES: All nominations should be submitted to the District Manager, BLM Safford District, 711 14th Ave., Safford, AZ 85546.

FOR FURTHER INFORMATION CONTACT: Elmer Walls, Gila Box Coordinator, Gila Resource Area, Safford District, 711 14th Ave., Safford, AZ 85546, telephone (602) 428–4040.

Dated: February 22, 1995.

William Civish,

District Manager.

[FR Doc. 95–6634 Filed 3–16–95; 8:45 am]

BILLING CODE 4130–32–M

[NV–035–95–1220–00]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Douglas, Lyon, Mineral and Storey Counties on and adjacent to two Off Highway Vehicle race courses: April 30, 1995—High Sierra Motorcycle Club, Wassuks Hare 'N' Hound—Permit Number NV–035–95–11, May 13–14, 1995—Western States Racing Association, Virginia City Grand Prix—Permit Number NV–035–95–06.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of two motorcycle race events.

EFFECTIVE DATES: April 30, 1995 and May 12–14, 1995.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Spectators shall remain in safe locations as directed by event officials and BLM personnel.

Specific Information on each event follows:

1. High Sierra Motorcycle Club—Wassuks Hare 'N' Hound—Permit Number NV–035–95–11. This event is a one-lap race along 60 to 90 miles of dirt roads and dry wash trails located in the Wassuk foothills near Yerington, Nevada in Lyon and Mineral Counties within T10N R27E, R28E; T11N R26E, R27E; T12N R26E, R27E, R28E; T13N R26E, R27E; T14N R27E. The public lands to be closed to public use include existing roads and trails identified on the ground by colorful flagging and paper arrows attached to wooden stakes designating the race route. This closure will be in effect from 6:00 a.m. through 5:00 p.m. April 30, 1995.

2. Western States Racing Association—Virginia City Grand Prix Motorcycle Race—Permit Number NV–035–95–06. This event is a multiple-lap motorcycle race on dirt roads and trails near Virginia City, Nevada in Storey County within T17N R21E. The public lands to be closed to public use include those roads and trails identified with colorful flagging and paper arrows attached to wooden stakes designating the race route on the ground. Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited. This closure will be in effect from 6:00 p.m. on May 12 through 4:00 p.m. on May 14, 1995.

The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the events.

Authority: 43 CFR 8341; 43 CFR 8364 and 43 CFR 8372.

PENALTY: Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: March 10, 1995.

John Singlaub,

District Manager.

[FR Doc. 95–6631 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–HC–M

Notice

AGENCY: Bureau of Land Management [ID–030–993–07770–66].

ACTION: Notice of office relocation.

SUMMARY: The Bureau of Land Management, Idaho Falls Office including Fire Dispatch, warehouse operations, Big Butte Resource Area Office and Medicine Lodge Resource Area Office will be relocated. Effective April 6, 1995 the address of the Idaho Falls Office, including the Big Butte Resource Area, the Medicine Lodge Resource Area, will be changed from 940 Lincoln Road, Idaho Falls, Idaho 83401 to 1405 Hollipark, Idaho Falls, Idaho 83401. The address of Fire Dispatch and warehouse operations will change from 965 Lincoln Road, Idaho Falls, Idaho 83401 to 1405 Hollipark, Idaho Falls, Idaho 83401.

DATES: Effective April 6, 1995.

ADDRESSES: New address will be: Bureau of Land Management, Idaho Falls Office, 1405 Hollipark, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Sandy Courtney-Berain at 940 Lincoln Road, Idaho Falls, ID 83401 or by calling (208) 524–7510.

Dated: March 8, 1995.

Gary L. Bliss,

Associate District Manager.

[FR Doc. 95–6550 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., on Wednesday, April 12, 1995, in the Environmental Education Center, Barataria Preserve Unit, Jean Lafitte National Historical Park and Preserve, 7400 Highway 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection

of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Old Business
—New Business
—Update on Park Resource Issues
—Presentation by the National Biological Service
—General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the pubic may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Person wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: March 8, 1995.

Jerry Rogers,

Regional Director, Southwest Region.

[FR Doc. 95–6691 Filed 3–16–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–684 and 685 (Final)]

Fresh Cut Roses From Colombia and Ecuador

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Colombia and Ecuador of fresh cut roses, provided for in subheading 0603.10.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective September 16, 1994, following a preliminary determination by the Department of Commerce that imports of fresh cut roses from Colombia and Ecuador were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 20, 1994 (59 FR 52989). The hearing was held in Washington, DC, on January 26, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 13, 1995. The views of the Commission are contained in USITC Publication 2862 (March 1995), entitled ''Fresh Cut Roses from Colombia and Ecuador: Investigations Nos. 731–TA–684 and 685 (Final).''

Issued: March 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6624 Filed 3–16–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–726–729 (Preliminary)]

Polyvinyl Alcohol From China, Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–726–729 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by Section 212b of the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Japan, Korea, and Taiwan of polyvinyl alcohols,[1] provided for in subheading 3905.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 24, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by May 1, 1995.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended.

EFFECTIVE DATE: March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on March 9, 1995, by Air Products and Chemicals, Inc., Allentown, PA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Nuzum and Commissioner Rohr dissenting.

[1] Polyvinyl alcohol is a dry, white to cream-colored, water-soluble synthetic polymer usually prepared by hydrolysis of polyvinyl acetate. The product covered by the petition includes all polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid.

investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 30, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202–205–3188) not later than March 28, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 4, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other 4 parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 13, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6583 Filed 3–16–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–370]

Certain Salinomycin Biomass and Preparations Containing Same; Notice of Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, Teresa M.B. Martinez, Esq. and Juan S. Cockburn, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Teresa M.B. Martinez, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: March 10, 1995.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 95–6625 Filed 3–16–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 23, 1994, and published in the Federal Register on December 6, 1994, (59 FR 62750), the Binding Site, Inc., 5889 Oberlin Drive, Suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Normorphine (9313)	I
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Methadone intermediate (9254)	II

A comment was filed by a registered manufacturer. The comment was considered, however, DEA determined that the application should be approved. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 13, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–6640 Filed 3–16–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 18, 1995, North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of marihuana seed which

will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with the independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 13, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–6641 Filed 3–16–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

March 13, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ((202) 395–7316).

Type of Review: Extension
Agency: Employment Standards Administration
Title: Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement
OMB Number: 1215–0151
Agency Number: CA–1032
Frequency: Annually
Affected Public: Individuals or households
Number of Respondents: 50,000
Estimated time per respondent: 20 minutes
Total Burden Hours: 16,667
Description: The CA–1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the amount of compensation being paid is correct.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 95–6661 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–27–M

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as described in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of

submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. ME950038, dated Feb. 10, 1995.

Agencies with construction pending, to which this wage decision would have been applicable, should utilize Wage Decision ME950037. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume III

Tennessee
TN950057 (Mar. 17, 1995)
TN950058 (Mar. 17, 1995)
TN950059 (Mar. 17, 1995)
TN950060 (Mar. 17, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parenthesis following the decisions being modified.

Volume I

New York
NY950003 (Feb. 10, 1995)
NY950021 (Feb. 10, 1995)
NY950060 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950042 (Feb. 10, 1995)
PA950064 (Feb. 10, 1995)
PA950065 (Feb. 10, 1995)
West Virginia
WV950006 (Feb. 10, 1995)

Volume III

Alabama
AL950004 (Feb. 10, 1995)
AL950006 (Feb. 10, 1995)
AL950018 (Feb. 10, 1995)
AL950034 (Feb. 10, 1995)
AL950044 (Feb. 10, 1995)
Florida
FL950008 (Feb. 10, 1995)
FL950045 (Feb. 10, 1995)
FL950077 (Feb. 10, 1995)
FL950095 (Feb. 10, 1995)
Georgia
GA950003 (Feb. 10, 1995)
GA950022 (Feb. 10, 1995)
GA950040 (Feb. 10, 1995)
GA950050 (Feb. 10, 1995)
GA950058 (Feb. 10, 1995)
GA950065 (Feb. 10, 1995)
GA950066 (Feb. 10, 1995)
North Carolina
NC950050 (Feb. 10, 1995)
Tennessee
TN950003 (Feb. 10, 1995)
TN950005 (Feb. 10, 1995)
TN950016 (Feb. 10, 1995)
TN950017 (Feb. 10, 1995)

Volume IV

Illinois
IL950001 (Feb. 10, 1995)
IL950002 (Feb. 10, 1995)
IL950003 (Feb. 10, 1995)
IL950004 (Feb. 10, 1995)
IL950005 (Feb. 10, 1995)
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IL950008 (Feb. 10, 1995)
IL950009 (Feb. 10, 1995)
IL950011 (Feb. 10, 1995)
IL950012 (Feb. 10, 1995)
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IL950016 (Feb. 10, 1995)
IL950017 (Feb. 10, 1995)
IL950020 (Feb. 10, 1995)
Indiana
IN950001 (Feb. 10, 1995)
IN950005 (Feb. 10, 1995)
IN950006 (Feb. 10, 1995)
Michigan
MI950035 (Feb. 10, 1995)

Volume V

Kansas
KS950005 (Feb. 10, 1995)
KS950014 (Feb. 10, 1995)
KS950029 (Feb. 10, 1995)
KS950066 (Feb. 10, 1995)
Nebraska
NE950009 (Feb. 10, 1995)
NE950011 (Feb. 10, 1995)
Texas
TX950063 (Feb. 10, 1995)

Volume VI

California
CA950001 (Feb. 10, 1995)
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950027 (Feb. 10, 1995)
North Dakota
ND950002 (Feb. 10, 1995)
ND950026 (Feb. 10, 1995)
ND950049 (Feb. 10, 1995)
ND950050 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of March 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–6442 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–30,224, TA–W–30,370]

Apollo Dye, Paterson, NJ and Leader Dye & Finishing, Paterson, NJ; Notice of Revised Determination on Reopening

On March 7, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firms.

The initial investigation resulted in negative determinations on November 28, 1994 for workers at both firms because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not

met. The denial notices were published in the **Federal Register** on December 16, 1994 (59 FR 65076).

The findings show that Apollo Dye is the parent company of Leader Dye & Finishing. Both firms are engaged in producing printed fabric and had integrated production.

A late response to the Department's customer survey shows that a major account reduced its business with Apollo Dye because of increased imports of printed dyed fabric.

Other findings show that U.S. imports increased absolutely and relative to domestic shipments in 1993 compared to 1992 and in the first six months of 1994 compared to the same period in 1993. The ratio of imports to U.S. production reached 143 percent in 1994.

Other findings show that the both plants closed in July 1994 when all production ceased and all workers were laid off.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with the printed dyed fabric produced by the subject firms contributed importantly to the decline in production and to the total or partial separation of workers at the subject firms. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All former workers of Apollo Dye, Paterson, New Jersey and its subsidiary, Leader Dye & Finishing, Paterson, New Jersey who became totally or partially separated from employment on or after August 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6652 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,505]

Cushman Industries, Inc., Hartford, CT; Notice of Affirmative Determination Regarding Application for Reconsideration

On February 8, 1995, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on January 20, 1995 and was published in the **Federal Register** on February 10, 1995 (60 FR 8061).

New findings show from the company show company imports of chucks from China.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 7th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6657 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,730]

Lightolier Model Shop of the Genlyte Group, Secaucus, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lightolier Model shop of the Genlyte Group, Secaucus, New Jersey. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,730; Lightolier Model Shop of the Genlyte Group Secaucus, New Jersey (March 7, 1995)

Signed at Washington, D.C. this 9th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6654 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,366]

H & R Blocks, Forks, WA; Notice of Revised Determination on Reopening

On March 8, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination on November 22, 1994 for workers at the subject firm. The denial notice was published in the **Federal Register** on December 16, 1994 (59 FR 65076).

The findings show that H & R Blocks had reduced sales in 1993 compared to 1992 and all workers were laid off on December 31, 1993. New findings show a late response indicating that the subject firm's sole customer had increased its reliance on imports in 1994 from 1993 while decreasing its purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with cedar shakes and shingles produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All former workers of H & R Blocks in Forks, Washington who became totally or partially separated from employment on or after September 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6653 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Personal Products Co (Co)	Milltown, NJ	03/06/95	02/13/95	30,783	Ladies' Sanitary Products.
IBM (Wkrs)	Endicott, NY	03/06/95	02/15/95	30,784	Support Services.
American Tobacco Co. (The) (Co)	Chester, VA	03/06/95	02/10/95	30,785	Cigarettes.
Sandusky Plastics Inc. (Wkrs)	Sandusky, OH	03/06/95	02/21/95	30,786	Packaging Materials.
Bridgestone/Firestone, Inc. (URW)	Decatur, IL	03/06/95	02/17/95	30,787	Tires, Auto and Light Truck.
Meridian Oil, Inc (Wkrs)	Houston, TX	03/06/95	02/20/95	30,788	Oil and Gas.
Schweiger Industries, Inc. (USWA)	Jefferson, WI	03/06/95	02/17/95	30,789	Upholstered Furniture.
C.H. Todd, Inc. (Co)	Wichita, KS	03/06/95	02/06/95	30,790	Crude Oil and Natural Gas.
D.L.C.I. (Wrks)	Van Buren, ME	03/06/95	02/15/95	30,791	Bicycle Frames.
Pennzoil Products Co. (UE)	Bradford, PA	03/06/95	02/22/95	30,792	Crude Oil and Natural Gas.
Phillips Petroleum Co, E&P Permian (Co.).	Odessa, TX	03/06/95	02/17/95	30,793	Support Services.
Western Cabinet & Millwork, Inc. (CM)	Woodinville, WA	03/06/95	02/22/95	30,794	Wood Cabinets and Millwork Products.

[FR Doc. 95–6659 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,397; 29,397A; 29,398]

Shell Oil Co.; Shell Western E & P Inc. (SWEPI) A/K/A CalResources, LLC, Bakersfield, CA and all Other (SWEPI) Operations in California A/K/A CalResources, LLC; Shell Oil Company, Shell Development Company, Martinez, CA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 16, 1994, applicable to all SWEPI workers of Shell Oil Company in Bakersfield, California and in other locations in the State of California and the Shell Development Company in Martinez, California. The certification notice was published in the **Federal Register** on March 4, 1994, (59 FR 10429).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that Shell Oil Company's SWEPI operations have been reincorporated in the state of California as CalResources, LLC. Accordingly, the Department is amending the certification to show this matter.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,397 and TA–W–29,397A is hereby issued as follows:

All workers of Shell Oil Company, Shell Western E & P, Inc., (SWEPI) also known as (a/k/a) CalResources, LLC Bakersfield, California (TA–W–29,397); other SWEPI operations in California, a/k/a CalResources, LLC (TA–W–29,397A) and the Shell Development Company, Martinez, California (TA–W–29,398) engaged in employment related to the production of crude oil and natural gas who became totally or partially separated from employment on or after December 13, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6658 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,414]

Texaco Refining and Marketing, Incorporated Fuels Division, Tulsa, OK; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 27, 1995, one of the petitioners requested administrative reconsideration of the Department's notice of negative determination. The notice was issued on December 16, 1995 and published in the **Federal Register** on January 20, 1995 (60 FR 4194).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The workers produce refined petroleum products. Gasoline represents the predominant portion of sales at the Fuels Operation of Texaco Refining and Marketing.

Petitioner states that the refined petroleum workers at Texaco's Tulsa facility should be certified for TAA since the Department certified the workers producing crude oil and natural gas at Texaco's Exploration and Production Division in Tulsa.

Certification under the Trade Act is based on increased imports of articles that are like or directly competitive with those produced at the petitioning workers' firm and which contributed importantly to worker separations and sales or production declines at the plant. Refined products like gasoline, in all its many forms—leaded regular, unleaded regular, unleaded premium; diesel fuel; jet fuel; kerosene; propane; petroleum coke; asphalt and chemicals are not like or directly competitive with crude oil. Other findings show that refined petroleum products have a much lower import to domestic

shipment ratio than crude oil which currently is over 100 percent of U.S. domestic shipments.

The Department's denial was based on the fact that sales and production of gasoline and total refined petroleum products increased in the first nine months of 1994 compared to the same period in 1993. No customer survey was conducted since the company sells everything that it produces and there were no declining customers. Further, the company does not import refined petroleum.

Worker separations occurred in late 1994 and were mainly salaried workers. These workers were laid off because of a corporate reorganization. Production workers increased in the first nine months of 1994 compared to the same period in 1993.

U.S. imports of refined petroleum products decreased absolutely and relative to domestic shipments in 1992 compared to 1991 and in 1993 compared to 1992. U.S. imports of refined petroleum products accounted for only seven percent of domestic shipments in 1993.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 28th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6656 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act (JTPA), Title IV–D, Demonstration Program: Diversity in Apprenticeship

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and Solicitation for Grant Application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a grant competition for a demonstration program using Title IV–D funds of the Job Training Partnership Act. ETA expects to award between three (3) and five (5) grants to Community Based Organizations (CBOs) to provide technical assistance to employers, labor unions, and/or labor organizations which will encourage the voluntary promotion, recruitment, selection, training, and retention of minorities, in apprenticeable occupations with low minority ratios.

This notice describes the background, the application process, Statement of Work, evaluation criteria and reporting requirements. ETA anticipates that up to $750,000 will be available for the demonstration funding. The Bureau of Apprenticeship and Training (BAT), will provide the policy leadership in this project. BAT assists industry and business by developing and improving apprenticeship and training programs to provide skilled American workers in a globally competitive market.

DATES: Applications for grant awards will be accepted commencing May 1, 1995 at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: U.S.Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Charlotte Adams, Reference: SGA/DAA 95–004, Room S4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Division of Acquisition and Assistance, Telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts: Part I describes the background and purpose of the demonstration program and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the Statement of Work for the demonstration projects. Part IV identifies and defines the evaluation criteria to be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

BAT carries out the objectives of the National Apprenticeship Act of 1937, by assisting industry and business develop and improve apprenticeship and training programs to provide skilled workers. BAT registers apprentices and apprenticeship programs in 23 States, Guam, and other Pacific Islands; it also provides technical assistance to State Apprenticeship Councils (SACs) in the remaining 27 States, District of Columbia, Puerto Rico, and the Virgin Islands.

Since 1964, the Bureau of Apprenticeship and Training has promoted equal opportunity in apprenticeship for minorities. As of 1972, apprenticeship program sponsors have been required to take affirmative action in the recruitment and selection of apprentices to achieve the same representation in apprenticeship as in local labor market areas. Program sponsors (employers, or employers with unions) are not required to attain specific goals and timetables, but they are expected to make good faith efforts toward the attainment of their goals and timetables. Despite the substantial increase in the percentage of minorities in apprenticeship over the past 20 years, the degree of occupational integration can be improved according to the General Accounting Office study (GAO/HRD 92–45). For some sponsors, successful recruitment, training, and retention of minorities may require technical assistance from CBOs that have experience preparing minorities for apprenticeship. The purpose of this project is to design and provide that technical assistance to program sponsors such as employers/labor unions and groups to improve the opportunities for minorities to enter apprenticeship in high wage occupations that have a significantly lower percentage of minority participation. Examples of such occupations includes tool and die maker, machinist, line repairer, and machine repairer. The project further aims to be a researched based, voluntary, partnership approach to examining and resolving the issues.

A. Authorities

Part IV–D of the Job Training Partnership Act authorizes the use of funds for pilot and demonstration projects. The Department relies on applicants for grants to comply with all Federal and State laws in setting up their programs.

B. Purpose of the Demonstration

This demonstration program intends that CBOs develop systematic approaches for providing technical assistance to employers, labor unions, and labor organizations to enhance minority representation in occupations with low minority representation, 20% or less. Minorities constitute about 20 percent of the civilian labor force. (See appendix A. for a listing of major occupations and minority participation.)

Further, CBOs designing this project will strive to integrate information, resources, and results with grantees of the ''Women in Apprenticeship and Nontraditional Occupations'' (WA–

NTO) Act; the purpose of WA–NTO is to provide technical assistance to employers and labor unions to encourage the employment of women in apprenticeable occupations and other nontraditional occupations. (See appendix B for WA–NTO grantees and locations.)

Part II. Application Process

A. Eligible Applicants

Community Based organizations (CBOs) are eligible applicants to receive technical assistance grants.

Definitions: The term ''community based organization'' as defined in section 4(5) of the Job Training Partnership Act (29 U.S.C. 1501(5)), means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services. For this solicitation, the significant segment of communities are the private nonprofit organizations which are representative of organizations that have demonstrated experience administering programs that are capable of providing technical assistance (TA) for minorities for apprenticeship and nontraditional occupations.

Employers, and/or Labor Unions (E/LUs) employee organizations are eligible to be selected to receive TA provided by CBOs. If they wish to receive technical assistance, employers and labor unions must submit a technical assistance request sheet to the cognizant CBO. (see appendix C.) CBOs are requested to solicit TA requests from appropriate employers, labor unions/organizations.

Registered apprenticeship agency means the Bureau of Apprenticeship and Training in the United States Department of Labor or a State Apprenticeship Council recognized and approved by the Bureau of Apprenticeship and Training as the appropriate body for State registration or approval of local apprenticeship programs and agreements for Federal purposes.

Apprenticeship includes a formal paid training-work agreement where labor and management work together to promote learning on the job; to support the hands on learning there must be related theoretical instruction (often classroom). After completing the program standards successfully—usually three to five years—the apprentice is awarded a certificate of completion by either the BAT or SAC agency.

B. Contents

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the financial Proposal, and Part II, the Technical Proposal.

1. *Financial Proposal*—The Financial Proposal, Part I, shall contain the SF–424, ''Application for Federal Assistance'' (Appendix No. D), and SF 424–A, ''Budget'' (Appendix No. E). The Catalog of Federal Domestic Assistance number is 17.201. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each of the major cost categories for funds requested through this grant; and identification of the amount of each budget line item which will be covered by other funds, and the sources of those funds (including employer funds, in-kind resources, secured and unsecured loans, grants, and other forms of assistance, public and private); and a justification for the average cost of technical service per person.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. *Technical Proposal*—The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. No cost data or reference to price shall be included in the technical proposal.

C. Submission

A DOL/ETA panel will evaluate grant applications after the closing date of this solicitation. Incomplete or non-responsive proposals may be returned without evaluation. An application will be reviewed based upon the overall responsiveness of the application's content to the submission requirements and to the selection criteria found in Part IV, talking into consideration the extent to which funds are available.

D. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

E. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 5th of May must have been mailed by the 1st of May); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addresses, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by ''Express Mail Next Day Service—Post Office to Addresses'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on

both the receipt and the envelope or wrapper.

F. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before a grant award is executed.

G. Period of Performance

The period of performance will be 18 months, from the date of notice of grant approval.

H. Funding

DOL has set aside up to $750,000 to be disbursed, contingent upon resources being available for this purpose. ETA expects that grant awards will range from $150,000 to $250,000, with no award in excess of $250,000 each.

I. Grant Period and Option to Extend

Projects are to include 18 months of performance, with the option to extend for up to three months as a no cost extension to complete final reports. Applications must clearly describe project activities to be undertaken and goals to be achieved during the grant period.

J. Page Count Limit

Technical proposals are to be limited to approximately 15 single-side pages, single-spaced, size 10 font. (not including attachments).

Part III. State of Work

Each application must include in the appropriate section (s): (1) Information that responds to the requirements in this part; and (2) other information the offeror believes will address the selection criteria identified in Part IV. Each application should follow the format outlined here:

A. Target Group

The CBOs primary target groups are the employers, labor unions, and labor organizations, who would sponsor minorities in apprenticeship opportunities. Related to the primary group are those groups which may affect the recruitment, selection, training, and completion of apprenticeships. The secondary target includes minorities and/or minority organization who have an interest in a high skilled high wage apprenticeship opportunity. The potential opportunities may be defined by (a) employment growth as noted in appendix table F1. Employment, Projected Change in Employment 1992–2005, and Median Weekly Earnings for Occupations With at Least 250 Registered Apprentices on September 30, 1994. (Source: Bureau of Labor Statistics; (b) distribution of registered apprentices by occupations, sex, race/ethnicity, appendix A; and (c) Distribution of 1994 Cohort Apprentices by State, Sex, Race/Ethnicity, appendix F2. To enhance the geographical distribution and impact, the project encourages integrating with locations where the WA–NTO grantees are operating; it further encourages working relationships with relevant Administration initiatives such as ''One Stop Career Center Pilots'' operating in nine States, Job Corp, Job Service, School to Work, and Vocational Education projects.

B. Components of the Program

The design and components of the demonstration project must support the project purpose; CBOs would be expected to function as a professional consultant, working with employers to jointly assess the sponsor's recruitment, selection, and retention approaches and results to determine issues and problems. These joint assessments and findings will spotlight what areas involving pre-apprenticeship, apprenticeship, and post-apprenticeship that need addressing. CBOs should identify and provide a general description of: (1) Design, (b) processes, and (c) components of technical assistance, which may include as appropriate, but not limited to:

(1) Assessments instruments, measures, and approaches suitable for determining base line measures and user needs;

(2) Outreach and orientation strategies and services to recruit minorities into the employers' apprenticeable occupations;

(3) Outreach and recruitment strategies to ensure the participation of employers and/or labor unions labor organizations for apprenticeship and nontraditional occupations opportunities for minorities;

(4) Support groups to facilitate developing new networks for employers and labor unions/organization for minorities interested high skilled apprenticeable occupations;

(5) Local computerized data base referral system for employer/labor unions information; this can include current lists of minority tradepersons who are available mentoring young minorities, companies with high skilled occupations, and linkups with schools/groups preparing students for high tech high skilled occupations.

(6) Models and systems for programs which have been successful providing apprenticeship training and technical assistance for minorities in high skilled occupations; and

(7) Innovative technical assistance i.e., information brokering such as linkages to supporting projects i.e., Job Corp, WA–NTO, School to Work, One Stop Career Centers, which the CBOs deem necessary and helpful to meet the project's purpose.

(8) A modest evaluation, based on objectives and measures, after completion.

In addition, CBOs should identify relevant research or experience that supports effectiveness of their design and components.

C. Administration Management and Continuity

Identify the management structure, and demonstrate the means to ensure accountability for performance. Provide a description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. The grantees may employ focus groups and surveys, in addition to other methods, to collect information necessary to design the appropriate technical assistance.

D. Use of Existing Services and Resources

To leverage related resources, identify specific sources and amounts of other funds which will be used, in addition to funds provided through this grant.

E. Coordination and Linkages

A description of the consultation with relevant partners in developing project design and implementation. Working relationships with grantees from the WA–NTO project, One Stop Career Center, School to Work, and related complementary projects and pilots would strengthen the proposal.

F. Participant Services

A description of the services to be available and/or provided to workers who are project participants. From the joint assessment, a program design flow chart would be helpful to determine what kinds of TA/or related services would be provided to the employers,

labor union/organization, which affects minorities entry into high skilled occupation.

G. Outcomes

Provide a description of the project outcomes, measures of outcomes, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures should include, but are not limited to:

(1) A system or model that identifies employers, labor unions/organizations, minorities, and relevant partners (schools, organizations, etc.) working successfully with minorities/groups to recruit, select, train, and complete in skilled high paying apprenticeship opportunities;

(2) A model which describes what kinds of technical assistance are best related to successful recruitment, selection, and completion of minorities in high paying apprenticeship opportunities within a labor market area;

(3) Findings and/or evidence that employers, labor unions, labor organizations found the CBO provided technical assistance helpful and to an extent may be incorporated into the respective sponsors' policies, procedures, and information network.

(4) Other measurable performance based outcomes relevant to the purpose of the project, and agreed to by the project director and grantee.

H. Replicability

Include a description of how the demonstration project could be replicated in other geographic regions.

I. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended.

J. Allowable Activities

Grant funds awarded under this demonstration may be used to fund staff salaries, benefits, and non-personal services normally identified with consulting services such as travel, communication, facilities costs, printing, etc., as defined on the budget submission.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel selected by DOL. Panelists will evaluate the proposals based on the various factors enumerated below.

Evaluations will be made on the basis of what the proposed offeror intends to do during the grant period, and on the usefulness of the demonstration after the end of the grant period. Special consideration will be given to applicants who demonstrate coordination efforts between employer(s) and workers to oversee the implementation.

The Department relies on CBO grant applicants to comply with all Federal and State laws in setting up their programs. No grant funds will be awarded for CBO capacity building that is not directly related to the delivery of services to complete a technical assistance request.

A. Technical Evaluation (80%)

CBOs should address the following requirements:

1. Describe your organization's staff experience, services provided (type and for whom), and funding for those services; (15%)

2. Describe your organization's experience in assessing minority employment and training issues with employers, labor unions/organizations: include assessment instruments, measures, and general approaches; (15%)

3. Describe your organization's experience in building upon research and previous experiences to determine feasible creative options in using technical assistance to address sensitive employment and training issues; (15%)

4. Describe your experiences in working with federal/state and public sector employment and training initiatives and programs in general and specifically with minorities; include leveraging related project resources. (15%).

5. Describe your management structure and accountability systems/processes to assure the project is well planned, executive, and reviewed/evaluated. (10%)

6. Describe briefly, if selected, describe how the funds would be allocated in designing the project and components. (10%).

B. Cost Evaluation (20%)

CBOs must include a discussion of the cost of the projects versus the expected benefits and outcomes of the project. Major benefits would include employers, labor unions/organizations reviewing present procedures and willing to developing new approaches based upon the experience of this TA demonstration project. Also include brief justification of the budget. Discussions may be necessary with the applicants to clarify any inconsistencies in their applications.

C. Selection

ETA will consider geographic diversity and occupational impact in making grant awards to CBO's. ETA will make only one grant per CBO with or without multiple service providers or sub-contractors. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

A. Short descriptive quarterly report, due 30 days following the reporting quarter; format will be agreed to by grantees/grant officer.

B. Standard Form 269, Financial Status Report Form;

C. Final Project Report, including project assessment, approximately 5 pages, within 45 days of project completion.

Signed at Washington, DC, the 13th day of March 1995.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. Distribution of Registered Apprentices by Occupation, Sex and Race/Ethnicity as of September 30, 1994

B. Women in Apprenticeship and Non-Traditional Occupations (WA–NTO) Grantees

C. Technical Assistance Request Form

D. Application for Federal Assistance (S.F. 424)

E. Budget Form (Standard Form 424–A)

F1. Total Apprentices, 1992 Employment, Protected Change in Employment 1992–2005, and Median Weekly Earnings for Occupations with at Least 250 Registered Apprentices on September 30, 1994

F2. Distribution of 1994 Cohort Sex and Race/Ethnicity Apprentice Groups Across States

BILLING CODE: 4510–30–M

Number of Registered Apprentices by Occupation, Sex, and Race/Ethnicity as of September 30, 1994

Occupation Code	Occupation Title	Number of Registered Apprentices								
		Total	Asian	Black	Hispanic	A. Indian	Not Ident.	White	Male	Female
23	AUTOMOBILE MECHANIC	706	28	89	40	7	1	541	684	22
40	BOILERMAKER	1207	12	85	19	9	1	1081	1156	51
52	BRICKLAYER (CONST.)	2223	11	294	173	36	11	1698	2159	64
55	CABINETMAKER	363	2	71	18	3	0	269	351	12
67	CARPENTER	14322	99	1546	1031	373	25	11248	13563	758
75	CEMENT MASON	623	10	161	69	12	3	368	551	72
90	COOK (ANY IND)	560	6	188	25	2	2	337	363	197
116	DIE CAST/DIE MAKER	864	6	10	26	4	4	814	852	12
118	DIE MAKER	442	8	42	5	5	2	380	364	78
124	DIESEL MECHANIC	599	8	60	29	8	1	493	592	7
159	ELECTRICIAN	29567	305	2318	1632	389	65	24858	28309	1258
169	ELECTRONICS TECHNICIAN	313	6	23	9	3	1	271	265	48
195	FIRE FIGHTER	1811	7	161	98	16	1	1528	1717	94
199	FLOOR LAYER	441	2	40	48	5	1	345	433	8
221	GLAZIER	313	1	23	11	7	3	268	308	5
281	LINE ERECTOR	1078	17	57	51	21	1	931	1066	12
282	LINE INSTALLER REPAIRER	313	4	9	15	7	0	278	311	2
283	LINE MAINTAINER	1474	5	59	53	21	1	1335	1460	14
284	LINE REPAIRER	439	2	6	12	17	0	402	436	3
292	MACHINE REPAIRER	573	3	42	5	0	1	522	539	34
296	MACHINIST	2619	30	105	74	9	3	2398	2524	95
308	MAINT MECH (ANY IND)	1914	21	165	88	7	3	1630	1820	94
310	MAINTENANCE REPAIRER, BUIL	920	14	248	49	14	3	592	785	135
311	MAINT REPAIRER, INDUSTRIAL	575	4	53	11	7	0	500	564	11
335	MILLWRIGHT	2337	11	128	60	33	3	2102	2226	111
365	OPERATING ENGINEER	2853	24	381	141	116	22	2169	2212	641
379	PAINTER (CONST)	2613	32	322	202	58	6	1993	2373	239
412	PIPE FITTER (SHIP & BOAT)	345	3	58	0	0	0	284	315	30
414	PIPE FITTER (CONST)	8789	89	648	466	117	9	7460	8491	298
423	PLASTERER	519	4	116	59	11	2	327	493	26
432	PLUMBER	9749	66	757	392	110	16	8408	9503	246
437	POLICE OFFICER I	878	7	64	21	7	0	779	774	104
480	ROOFER	4107	20	696	548	68	14	2761	4038	69
510	SHEET METAL WORKER	7376	70	606	451	75	13	6161	7159	217
536	STATIONARY ENGINEER	491	3	81	38	4	1	364	464	27
573	TILE SETTER	289	1	24	21	0	0	243	271	18
584	TOOL MAKER	720	17	34	15	2	0	652	665	55
586	TOOL & DIE MAKER	3588	24	104	76	9	7	3368	3491	97
622	WELDER-COMBINATION	356	16	42	10	3	2	283	327	29
637	HEATING&AIR-COND INST-SER	1274	22	114	74	2	1	1061	1249	25
643	ELECTRICIAN (MAINTENANCE)	1462	22	175	37	18	2	1208	1342	120
663	COOK (HOTEL & REST)	2069	37	453	109	20	5	1445	1595	474
666	REFRIGERATION MECHANIC	749	31	26	28	5	3	656	730	19
669	STRUCTURAL-STEEL WORKER	3548	22	355	217	141	5	2808	3403	145
754	FIRE MEDIC	759	6	101	41	2	1	608	722	37
771	ELECTRICIAN(SHIP & BOAT)	411	2	77	2	1	0	329	333	78
791	CHEMICAL OPERATOR III	938	13	142	99	7	2	675	787	151
840	CHILD CARE DEV SPECIALIST	1520	7	323	65	4	1	1120	26	1494
851	CORRECTION OFFICER	2822	14	941	77	8	7	1775	2503	319
909	INSULATION WORKER	1548	15	98	78	10	2	1345	1469	79
	TOTAL	126369	1189	12721	6918	1813	257	103471	118133	8234

APPENDIX A. BAT Data, 70%

Women in Apprenticeship and Non-Traditional Occupations (WANTO) Grantees

Ms. Linda Wilcox
Assistant Director
Women Unlimited
Augusta, ME
207/623-7576

Ms. Sharon Caldwell-Newton
Women's Resource Center
Grand Rapids, MI
616/458-5443

Ms. Cyntina Marano
Executive Director
Wider Opportunities for Women
Washington, D.C.
202/638-3143

Ms. Lauren Sugerman
Executive Director
Chicago Women in Trades
Chicago, IL
312/942-1444

Ms. Rose Picardi
Executive Director
Tradeswomen of Purpose/Women in Nontraditional Work, Inc.
Philadelphia, PA
215/545-3700

Ms. Lila Burke
Executive Director
YWCA of Greater Memphis
Memphis, TN
901/323-2211

APPENDIX B

U. S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
BUREAU OF APPRENTICESHIP AND TRAINING

Request for Technical Assistance
Project "Diversity in Apprenticeship"

The U.S. Department of Labor is seeking employers and labor unions/organizations who wish to participate in a demonstration project; the project envisions Community Based Organizations (CBOs) and employers, or labor unions jointly assessing issues surrounding minorities in high skilled apprenticeship. These issues would include the outreach, recruitment, training, and retention of minorities in high skilled apprenticeship occupations. CBOs and the sponsors would then jointly develop technical assistance models that would seek to increase the opportunities for minorities in skilled apprenticeable occupations.

ETA plans to award between three (3) and five (5) demonstration grants to CBOs to develop systematic approaches for providing technical assistance to employers, labor unions, and labor organizations for the purposes described. In addition, ETA encourages the CBOs to integrate the information and resources to the extent possible with the grantees of the "Women in Apprenticeship and Nontraditional Occupations" project, and/or relevant related Federal/State initiatives.

CBOs are asked to have appropriate employers and labor organizations complete this request; CBOs would then submit this request with the grant proposal at the date listed in the Solicitation for Grant Application.

Name_____ **Title**_____

Organization_____

Address _____**zip**_____

Phone_____ **FAX**_____

Check Affiliation: Employer _____ **Labor Union/related**____

Industry and Product: _____

APPENDIX C

Please address the following questions:

1. Would your company be willing to participate in this demonstration program on a voluntary basis with the relevant Community Based Organization representative:

2. Describe your company's experience in recruiting, training, and retaining minorities in apprenticeship and nontraditional occupations:

3. Describe any issues with recruiting, training, and/or retaining minorities in high skilled apprenticeable occupations based upon your experiences.

4. Describe the apprenticeable occupations your company plans to have in the future; number, types, locations, etc.

5. Describe the target group of minorities in your geographical labor market.

6. What areas of technical assistance do you see as helpful to developing systems or models to improve opportunities for minorities in high skilled occupations?

7. Describe any input which you feel would be important in analyzing experiences and drawing conclusions in this area:

_____ _____

Signature **Date**

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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APPENDIX D

BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

APPENDIX E

INSTRUCTIONS FOR BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Total Apprentices, 1992 Employment, Projected Change in Employment 1992-2005, and Median Weekly Earnings for Occupations with at Least 250 Registered Apprentices on September 30, 1994

AMS Occupation Code	Occupation Title	Total Apprentice	1992 Employment	Projected Change in Employment 1992-2005		Median Weekly Earnings
				Number	Percent	
23	AUTOMOBILE MECHANIC	706	739,000	168,000	23	$422
40	BOILERMAKER I	1207	26,000	-1,000	-4	553
52	BRICKLAYER (CONST.)	2223	139,000	36,000	26	479
55	CABINETMAKER	363	114,000	28,000	24	340
67	CARPENTER	14322	978,000	198,000	20	439
75	CEMENT MASON	623	100,000	13,000	13	419
90	COOK (ANY IND)	560	1,155,000	409,000	35	251
116	DIE CAST/DIE MAKER	864	138,000	-9,000	-7	632
118	DIE MAKER	442	138,000	-9,000	-7	632
124	DIESEL MECHANIC	599	263,000	64,000	24	479
159	ELECTRICIAN	29567	518,000	100,000	19	549
169	ELECTRONICS TECHNICIAN	313	323,000	74,000	23	591
195	FIRE FIGHTER	1811	229,000	38,000	17	619
199	FLOOR LAYER	441				
221	GLAZIER	313	39,000	12,000	30	
281	LINE ERECTOR	1078	108,000	9,000	9	697
282	LINE INSTALLER REPAIRER	313	108,000	9,000	9	697
283	LINE MAINTAINER	1474	108,000	9,000	9	697
284	LINE REPAIRER	439	108,000	9,000	9	697
292	MACHINE REPAIRER	573	73,000	6,000	9	627
296	MACHINIST	2619	352,000	-4,000	-1	512
308	MAINT MECH (ANY IND)	1914	1,145,000	319,000	28	510
310	MAINTENANCE REPAIRER, BUIL	920	1,145,000	319,000	28	375
311	MAINT REPAIRER, INDUSTRIAL	575	477,000	-15,000	-3	510
335	MILLWRIGHT	2337	73,000	6,000	9	627
365	OPERATING ENGINEER	2853	136,000	23,000	17	503
379	PAINTER (CONST)	2613	440,000	128,000	29	398
412	PIPE FITTER (SHIP & BOAT)	345	351,000	27,000	8	520
414	PIPE FITTER (CONST)	8789	351,000	27,000	8	520
423	PLASTERER	519	32,000	5,000	16	399
432	PLUMBER	9749	351,000	27,000	8	520
437	POLICE OFFICER I	878	411,000	57,000	14	632
480	ROOFER	4107	127,000	28,000	22	338
510	SHEET METAL WORKER	7376	208,000	36,000	17	519
536	STATIONARY ENGINEER	491	31,000	2,000	5	581
573	TILE SETTER	289	139,000	36,000	26	
584	TOOL MAKER	720	138,000	-9,000	-7	632
586	TOOL & DIE MAKER	3588	138,000	-9,000	-7	632
622	WELDER-COMBINATION	356	97,000	-17,000	-17	453
637	HEATING&AIR-COND INST-SER	1274	212,000	62,000	29	494
643	ELECTRICIAN (MAINTENANCE)	1462	518,000	100,000	19	603
663	COOK (HOTEL & REST)	2069	602,000	276,000	46	251
666	REFRIGERATION MECHANIC	749	212,000	62,000	29	494
669	STRUCTURAL-STEEL WORKER	3548	66,000	15,000	22	
754	FIRE MEDIC	759	229,000	38,000	17	614
771	ELECTRICIAN (SHIP & BOAT)	411	518,000	100,000	19	591
791	CHEMICAL OPERATOR III	938	39,000	1,000	1	
840	CHILD CARE DEV SPECIALIST	1520	684,000	450,000	66	240
851	CORRECTION OFFICER	2822	282,000	197,000	70	498
909	INSULATION WORKER	1548	57,000	22,000	40	477
		126369				

APPENDIX F1, BLS Data

Distribution of 1994 Cohort Sex and Race/Ethnicity Apprentice Groups Across States

		Percentage of New Apprentices						
		Sex		Race/Ethnicity				
State	Total	Female	Male	Asian	Black	Hispanic	A. Indian	White
AK	358	0.7	0.7	1.3	0.3	0.2	9.1	0.6
AL	530	0.7	1.1	0.5	1.2	0.2	0.2	1.1
AR	1032	0.5	2.2	0.5	0.7	0.7	2.5	2.4
AZ	1108	1.7	2.2	0.5	0.6	6.4	21.2	1.7
CA	159	1.3	0.2	0.5	0.3	1.0	2.0	0.2
CO	1221	2.2	2.5	1.1	1.1	6.4	1.7	2.3
CT	135	0.6	0.2	0.2	0.6	0.4	0.3	0.2
DE	10	0.1	0.0	0.0	0.0	0.0	0.0	0.0
FL	3245	17.2	5.6	5.8	9.7	9.0	1.0	6.0
GA	1402	2.1	2.9	0.9	9.5	0.8	0.3	2.1
GU	286	0.4	0.6	39.4	0.0	0.1	0.1	0.1
IA	1022	0.9	2.1	2.0	0.2	0.5	0.2	2.5
ID	544	1.0	1.1	0.9	0.1	0.6	2.6	1.2
IL	3385	5.7	6.8	3.9	6.3	9.2	2.6	6.8
IN	3009	2.7	6.3	1.1	2.9	1.4	1.3	6.9
KS	331	0.4	0.7	0.3	0.5	0.5	1.3	0.7
KY	626	1.0	1.3	0.3	0.9	0.2	0.4	1.4
LA	1055	1.5	2.1	4.7	3.2	0.0	0.0	2.1
MA	193	0.4	0.4	0.6	0.5	0.5	0.2	0.4
MD	396	0.4	0.8	1.6	2.3	0.6	0.2	0.6
ME	249	1.5	0.4	0.0	0.0	0.0	0.0	0.6
MI	3106	4.9	6.3	2.7	4.3	1.9	4.5	6.9
MN	1264	2.5	2.5	3.6	0.9	0.8	3.7	2.8
MO	3235	4.0	6.6	1.9	5.2	1.5	2.4	7.2
MS	480	1.3	0.9	0.0	2.4	0.0	0.0	0.9
MT	345	0.5	0.7	0.2	0.0	0.1	5.6	0.7
NC	22	0.0	0.0	0.0	0.2	0.0	0.0	0.0
ND	118	0.1	0.2	0.0	0.0	0.1	0.9	0.3
NE	381	0.5	0.8	0.6	0.3	0.5	0.2	0.9
NH	104	0.2	0.2	0.2	0.0	0.0	0.0	0.3
NJ	1111	1.6	2.3	3.1	2.7	1.9	0.0	2.2
NM	1049	0.6	2.2	0.0	0.2	18.0	10.7	0.9
NV	1363	3.3	2.7	6.9	2.1	4.8	4.8	2.5
NY	900	1.9	1.8	1.1	3.0	2.5	1.2	1.6
OH	4006	7.0	8.1	3.6	8.8	1.7	1.5	8.6
OK	607	0.5	1.3	0.5	1.0	1.4	5.5	1.1
OR	82	0.3	0.2	0.5	0.0	0.1	0.1	0.2
PA	3377	4.7	6.9	1.7	6.9	2.3	1.5	7.3
RI	138	0.4	0.3	0.2	0.2	0.2	0.0	0.3
SC	208	0.6	0.4	0.2	0.8	0.0	0.1	0.4
SD	320	0.8	0.6	0.2	0.3	0.3	2.5	0.7
TN	1701	2.8	3.4	0.2	7.2	0.4	1.4	3.2
TX	3255	6.2	6.5	3.8	8.0	20.5	1.7	5.3
UT	768	1.3	1.5	1.4	0.1	1.9	3.3	1.7
VA	462	4.2	0.7	0.6	3.3	0.1	0.0	0.7
VT	119	0.1	0.2	0.0	0.0	0.0	0.0	0.3
WA	9	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WI	14	0.0	0.0	0.0	0.1	0.1	0.0	0.0
WV	1054	6.4	1.8	0.5	1.2	0.2	0.5	2.5
WY	67	0.0	0.1	0.2	0.0	0.1	0.3	0.2
ZA	165	0.1	0.3	0.5	0.1	0.3	0.0	0.4
Total	50126	100.0	100.0	100.0	100.0	100.0	100.0	100.0

APPENDIX F2, BAT DATA, 70%

[FR Doc. 95–6660 Filed 3–16–95; 8:45 am]
BILLING CODE 4510–30–C

[NAFTA–00319]

Woodward Governor Co., Stevens Point, WI.; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 3, 1995, applicable to all workers of the Aircraft Controls Group of the subject firm in Stevens Point, Wisconsin. The notice was published in the **Federal Register** on February 14, 1995 (60 FR 8416).

At the request of the State Agency and the company, the Department reviewed the certification for workers of the subject firm. New findings show that some production was in hydromatic controls. The workers were not entirely separately identifiable by product line and the plant will close in 1995. Accordingly, the Department is amending the certification to include all workers at Woodward Governor Company in Stevens Point, Wisconsin.

The intent of the Department's certification is to include all workers who were adversely affected at Woodward Governor Company in Stevens Point, Wisconsin by increased imports.

The amended notice applicable to NAFTA—00319 is hereby issued as follows:

All workers of the Woodward Governor Company, Stevens Point, Wisconsin who became totally or partially separated from employment on or after December 27, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–6655 Filed 3–16–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: April 3, 1995; 8:45 a.m.–6 p.m.; April 4, 1995; 8:45 a.m.–12 Noon.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistance Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: NSF and BIO strategic planning; integration of research and education.

Dated: March 14, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–6679 Filed 3–16–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML–Ren, ASLBP No. 95–707–02–ML–Ren, (Source Material License No. 34–19089–01)]

Atomic Safety and Licensing Board Panel; Notice of Hearing

March 13, 1995.

In the Matter of Advanced Medical Systems, Inc. Cleveland, Ohio.

Notice is hereby given that, by Memorandum and Order dated March 10, 1995, the Presiding Officer in this proceeding has granted the hearing requests of the Northeast Ohio Regional Sewer District (dated December 29, 1994) and the City of Cleveland, Ohio (dated January 13, 1995), and has conditionally granted the participation of the Cuyahoga County Local Emergency Planning Committee in a hearing regarding the license renewal application of Advanced Medical Systems, Inc. for its facility located at 1020 London Road in Cleveland, Ohio. Advanced Medical Systems, Inc. seeks continued permission from the Nuclear Regulatory Commission to possess various quantities of radioactive materials for use in its manufacture of medically related devices. The hearing will involve the sufficiency of the renewal application.

This proceeding will be conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR part 2, subpart L. Further details appear in Statement of Considerations, Informal Hearing Procedures for Materials Licensing Adjudications, 54 Fed. Reg. 8269 (February 28, 1989) and the March 10, 1995 Memorandum and Order referenced above. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St. NW., Washington, DC.

Advanced Medical Systems, Inc., the Northeast Ohio Regional Sewer District, the City of Cleveland, and the NRC Staff are parties to this proceeding. The Cuyahoga County Local Emergency Planning Committee may participate in this proceeding under the provisions of 10 CFR 2.1211(b) upon submission to the Presiding Officer (and service on the parties) of an affidavit of a Cuyahoga County official attesting that the Local Emergency Planning Committee is representing the County's interest in this matter. If admitted as a representative of an interested county, the Local Emergency Planning Committee's participation shall be limited to the extent allowed by 10 CFR 2.1211(b).

In accordance with 10 CFR 2.1205(l)(4), any person whose interest may be affected by this proceeding may, within 30 days of publication of this Notice, file a petition for leave to intervene. Such petition must identify (1) the interest of the petitioner in the proceeding, (2) how that interest may be affected by the results of the proceeding, with particular reference to the factors set out in 10 CFR 2.1205(g), (3) the petitioner's areas of concern about the licensing activity which must be germane to the subject matter of the proceeding, and (4) the circumstances establishing that the petition is timely and that the petitioner has the requisite standing to intervene in the hearing.

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies should be served upon the Presiding Officer; the Special Assistant; the Assistant General Counsel for Hearings and Enforcement; the Senior Attorney, Atomic Safety and Licensing Board Panel; and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies should also be served on the Licensee, through its attorney, Henry E. Billingsley, II, Arter and Hadden, 1100 Huntington Building, 925 Euclid Avenue, Cleveland, Ohio 44115; and the other parties through Thomas E. Lenhart, Assistant General Counsel, Northeast Ohio Regional Sewer District, 3826 Euclid Avenue, Cleveland, Ohio

44115; and Martha R. McCorkle, Assistant Director of Law, City of Cleveland Department of Law, Room 106, City Hall, 601 Lakeside Avenue, Cleveland, Ohio 44114. Pursuant to 10 CFR 2.1205(j)(2), any party may file an answer to a petition to intervene within 10 days of service of such petition (15 days in the case of the NRC Staff).

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to this proceeding may make a written statement in order to express his or her views of the issues involved in this license renewal proceeding. These statements are not evidence and do not become part of the decisional record under 10 CFR 2.1251(c). Written statements should be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated: March 13, 1995.

Marshall E. Miller,

Presiding Officer, Administrative Judge.

[FR Doc. 95–6617 Filed 3–16–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 50–374

Exemption

In the Matter of Commonwealth Edison Co., LaSalle County Station, Units 1 and 2.

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–11 and NPF–18, which authorize operation of the LaSalle County Station, Units 1 and 2 (the facility), at a steady state power level not in excess of 3323 megawatts thermal. The facility consists of two boiling water reactors at the licensee's site located in LaSalle County, Illinois. The licenses provide, among other things, that they are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section III.A.6(b) of Appendix J to 10 CFR Part 50 states the following in regard to performing Overall Integrated Containment Leakage Rate (Type A) Tests (ILRT):

> If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5(b), notwithstanding the periodic retest schedule of III.D., a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5(b), after which time the retest schedule specified in III.D. may be resumed.

The Type A tests performed during the first, third and fourth refueling outages for LaSalle County Station, Unit 2, were considered to be failures in the ''as-found'' condition due to penalties incurred as a result of leakage measured in Type B and C local leak rate tests (LLRT). Pursuant to Section III.A.6(b) of Appendix J, Type A testing was performed during the fifth refueling outage for LaSalle County Station, Unit 2, in December 1993. That Type A test satisfied the ''as-found'' acceptance criteria. Section III.A.6(b) of Appendix J requires an additional Type A test during the sixth refueling outage, currently scheduled for February 1995, in order to fulfill the condition of two consecutive successful tests prior to resuming the Type A test interval of Section III.D.

As an alternative to performing the required Type A test, the licensee has submitted a Corrective Action Plan to address excessive local leakage in accordance with the guidance provided in NRC Information Notice 85–71, ''Containment Integrated Leak Rate Tests,'' dated August 22, 1985. The Corrective Action Plan is in lieu of the increased test frequency required by Section III.A.6(b) and, therefore, an exemption from this requirement is needed.

Section III.D.1(a) of Appendix J requires ''* * * a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections.'' The last refueling outage for Unit 2 during the first 10-year inservice inspection period is the sixth refueling outage scheduled for February 1995. Therefore, in addition to the requirements for additional testing specified in Section III.A.6(b), a Type A test is required during the upcoming Unit 2 refueling outage as a result of the periodic retest schedule contained in Section III.D.1(a). To address the short-term desire not to perform a Type A test during the sixth refueling outage for Unit 2 and avoid potential future problems, the licensee has requested an exemption from this requirement such that future Type A test would not need to coincide with the end of 10-year inservice inspection periods.

The NRC may grant exemptions from the requirements of the regulations, pursuant to 10 CFR 50.12, that (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2) of 10 CFR Part 50 describes special circumstances as including cases that would not serve the underlying purpose of the rule or are not necessary to achieve the underlying purpose of the rule.

III

The underlying purpose of the requirements in Appendix J is to ensure that containment leakage remains below criteria established to limit the release of radioactive materials in the event of a design basis accident. The Type A test is defined in 10 CFR Part 50, Appendix J, Section II.F, as a ''test intended to measure the primary reactor containment overall integrated leakage rate (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter.'' Containment leakage is measured during the periodic testing required by Section III.D.1(a) and the additional testing requirements of Section III.A.6 if the measured leakage exceeds the established limits. The testing and other requirements contained in Appendix J ensure that leakage from the containment structure and penetrations remain below the acceptance criteria.

The licensee conducted four ILRTs during the first 10-year service period for Unit 1. For Unit 2, ILRTs were performed during the first, third, fourth, and fifth refueling outages. The Type A test history for Unit 2 is that the measured leakage rates for Type B and C penetrations, when added to the measured results from the Type A test, resulted in an ''as-found'' integrated leakage rate above the acceptance criteria. These test failures were the direct result of leakage penalties from Type B and C LLRTs.

Leakage from specific containment penetrations that have been major contributors to the failure of the integrated leakage rate acceptance criteria for Unit 2 have been identified. These leakage paths include isolation valves associated with the drywell equipment and floor drain sumps, reactor water cleanup suction, transversing incore probe air purge supply, residual heat removal shutdown cooling return, hydrogen recombiners, and primary containment chilled water supply. The leakage associated with the reactor water cleanup suction penetration provided the overwhelming contribution of local leakage penalty that resulted in the unsuccessful test during the fourth refueling outage. Leakage through the various isolation valves has been attributed to causes

such as the introduction of foreign materials, misapplication of valve types, insufficient seating, defective valve internals, and failure of valve motor operators. Specific corrective actions have addressed the above contributors by improving foreign material exclusion controls, replacing and refurbishing valves, revising test procedures, and cleaning and lapping seating surfaces. Overall performance of the identified penetrations has improved significantly.

In addition to the specific corrective actions taken for the above isolation valves, the licensee's Corrective Action Plan includes programmatic changes to limit the leakage occurring from Type C penetrations. These changes include development and implementation of an improved trending program to track penetration and valve leakage rate performance. The improved trending will be designed to help determine any patterns or groups of valves that demonstrate either good or poor leakage behavior. Those penetrations determined to be susceptible to excessive leakage will also be subject to additional testing requirements beyond that routinely performed during refueling outages. Identified penetrations will be subject to Type B or C testing during any non-refueling outage for which a unit is in cold shutdown for fourteen days or longer. Poorly performing penetrations will also be reviewed for possible improvements in testing methods as well as possible repair, modification, or replacement of isolation devices.

As discussed in Information Notice 85–71, the staff has determined that:

> * * * if Type B and C leakage rates constitute an identified contributor to this failure of the ''as-found'' condition for the Type A test, the general purpose of maintaining a high degree of containment integrity might be better served through an improved maintenance and testing program for containment penetration boundaries and isolation valves. In this situation, the licensee may submit a Corrective Action Plan with an alternative leakage test program proposals as an exemption request for NRC staff review. If this submittal is approved by the NRC staff, the licensee may implement the corrective action and alternative leakage test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A test.

The licensee's Corrective Action Plan describes the modification, testing and preventive maintenance programs implemented or planned to decrease the leakage from poorly performing isolation devices. The specific corrective actions performed to date and the programmatic changes associated with ensuring future performance of penetrations provide an equivalent degree of assurance that containment integrity will be maintained as that provided by an additional Type A test performed on the accelerated frequency specified by Section III.A.6(b) of Appendix J. The NRC staff concludes that a return to the normal retest interval of Section III.D of Appendix J is justified and that the corrective actions taken and the creation of the Corrective Action Plan for local leak rate testing adequately address the underlying purpose of the requirements of Appendix J.

In the absence of the additional testing requirements of Section III.A.6(b), a periodic retest schedule is specified in section III.D.1(a). This retest schedule requires a minimum of three tests during a 10-year service period with the third test coinciding with the 10-year plant inservice inspections. LaSalle, Unit 1, completed four tests during the first ten year interval with the last test coinciding with the 10-year plant inservice inspections. Due to experiencing Type A test failures, Unit 2 has performed four tests during the first 10-year service period and without the requested exemptions would be required to perform a fifth Type A test during the sixth refueling outage. The sixth refueling outage for Unit 2 is the last refueling outage of the 10-year inservice inspection period and, therefore, the Type A test is required based on the requirements of Section III.D.1(a) as well as the previously discussed requirements of Section III.A.6(b).

Pursuant to Section II.F of Appendix J, the intent of Type A testing is ''* * * to measure the primary reactor containment overall integrated leakage rate * * * at periodic intervals. * * *'' The licensee has conducted a total of eight ILRTs for LaSalle, Units 1 and 2. The tests conclude that the largest variations in the measured overall leak rates result from the adjustments required to account for leakage from Type B and C penetrations. Leakage from sources other than those covered by Type B and C testing, such as the containment structure itself, have repeatedly been well below the acceptance criteria. The requested exemption from Section III.D.1(a) does not affect the performance of local leak rate testing which would be expected to detect the most probable sources of containment leakage. As discussed above, the licensee will not only continue routine Type B and C testing during each refueling outage, but will also attempt to minimize local leakage in accordance with their Corrective Action Plan.

The proposed exemption from Section III.D.1(a) does not revise the expected Type A test interval of between thirty and fifty months which is derived from the requirement to perform three tests in each ten year period at approximately equal intervals. For example, Unit 2 performed a Type A test during the fifth refueling outage in December 1993 and, with the proposed exemption, will perform another Type A test during the seventh refueling outage scheduled to begin in late 1996. The licensee has only proposed to exempt the requirement to perform a Type A test during the 10-year plant inservice inspections. Given the continued performance of Type A testing at approximately equal intervals of forty months and the performance of Type B and C testing at the required intervals to identify the most probable sources of containment leakage, the NRC staff finds that performance of Type A tests coincident with 10-year plant inservice inspections is not necessary to achieve the underlying purpose of the rule.

On the bases of the above discussions related to Sections III.A.6(b) and III.D.1(a) of Appendix J, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12. Further, the staff finds that providing a one-time exemption of the additional testing requirements of section III.A.6(b) and an exemption from the requirement to perform a Type A test coincident with the first 10-year plant inservice inspections pursuant to Section III.D.1(a) will not present undue risk to the public health and safety. Although requested as a permanent exemption, the exemption from the requirements of section III.D.1(a) of Appendix J related to the third test coinciding with the 10-year plant inservice inspections has been granted as a one-time exemption for the first 10-year inservice inspection interval. The exemption is, in effect, limited to the Type A test planned for the current Unit 2 outage since Unit 1 has completed the required Type A tests during its first inservice inspection interval. Future relationships between Appendix J and inservice inspection intervals can be addressed by anticipated changes to Appendix J or requests for exemptions from the current requirements.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12, these exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby

grants an exemption from the additional testing requirements of Section III.A.6(b) of Appendix J to 10 CFR Part 50 to allow the licensee to resume the Type A test interval of Section III.D for LaSalle, Unit 2, and an exemption from the requirements of Section III.D.1(a) of Appendix J to allow the licensee to de-couple the Type A testing and the first 10-year plant inservice inspections for LaSalle, Unit 2.

Pursuant to 10 CFR 31.32, the Commission determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 13187).

Dated at Rockville, Maryland this 10th day of March 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6616 Filed 3–16–95; 8:45 am]

BILLING CODE 7590–01–M

Licensing Support System Advisory Review Panel

ACTION: Change in meeting location.

SUMMARY: This is to announce a change in location of the next meeting of the Licensing Support System Advisory Review Panel (LSSARP). The meeting will be held in Las Vegas, Nevada, on March 22 and 23, 1995, as previously announced in the **Federal Register** on March 3, 1995 (60 FR 11998). The location of the meeting has been moved to a facility on the campus of the University of Nevada at Las Vegas (UNLV). The Panel will be using the Student Lounge, Room A–207, in the Thomas Beam Engineering Building. The building may be reached from the Claymont Road entrance to the campus.

FOR FURTHER INFORMATION CONTACT:

John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1969.

Dated at Washington, DC this 15th day of March, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–6796 Filed 3–16–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 1047 and Docket No. A95–6]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Issued: March 13, 1995.

Docket Number: A95–6

Name of Affected Post Office: DeGraff, Minnesota 56233

Name(s) of Petitioner(s): Helen Byrne, *et al.*

Type of Determination: Consolidation

Date of Filing of Appeal Papers: March 7, 1995

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 22, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

March 7, 1995—Filing of Appeal letter

March 13, 1995—Commission Notice and Order of Filing of Appeal

April 3, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]

April 11, 1995—Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115(a) and (b)]

May 1, 1995—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]

May 16, 1995—Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]

May 23, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

July 5, 1995—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–6579 Filed 3–16–95; 8:45 am]

BILLING CODE 7710–FW–P

[Order No. 1046, and Docket No. A95–5]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Issued: March 13, 1995.

Docket Number: A95–5

Name of Affected Post Office: Oak, Nebraska 68964

Name(s) of Petitioner(s): Tom Jensen

Type of Determination: Consolidation

Date of Filing of Appeal Papers: March 3, 1995

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The

Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

March 3, 1995—Filing of Appeal letter
March 13, 1995—Commission Notice and Order of Filing of Appeal
March 28, 1995—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
April 7, 1995—Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
April 27, 1995—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
May 12, 1995—Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
May 19, 1995—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
July 1, 1995—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–6580 Filed 3–16–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35474; File No. SR–BSE–95–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Boston Stock Exchange, Inc. Relating to an Extension of a Pilot Program for Stopping Stock in Minimum Variation Markets

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 28, 1995, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify certain language in the original filing and to request accelerated approval of the proposal.[3] 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 Exchange seeks a four month extension of its pilot program regarding stopping stock in minimum variations markets.[4] The text of the proposed rule change is available at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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 purpose of the proposed rule change is to extend the SEC-approved pilot provision regarding the execution of stopped orders in minimum variation markets for an additional four months. The pilot provision expires on March 21, 1995, and this proposal would extend the pilot until July 21, 1995.

The pilot rule requires the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stop price or higher in the case of a buy order (lower in the case of a sell order), (b) after the applicable Exchange share volume is exhausted or (c) at any time prior to (a) or (b) if filled at an improved price.[5] In no event will a stopped order be executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives 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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Karen A. Aluise, Assistant Vice President, BSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated February 28, 1995 (''Amendment No. 1'').

[4] The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a pilot program permitting specialists to stop stock in minimum variation markets in Securities Exchange Act Release No. 35068 (December 8, 1994), 59 FR 64717 (December 15, 1994) (File No. SR–BSE–94–09) (''1994 Pilot Approval Order''). *See also* Ch. II, Sec. 38 of the BSE Rules.

Independent of the BSE's request for an extension of its pilot program, the Commission has received a comment letter regarding permanent approval of the New York Stock Exchange's procedures for stopping stock in minimum variation markets. *See* letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995. The comment letter addresses the broader issue of whether stopping stock is consistent with the specialist's agency obligations and recommends that the Commission not grant permanent approval to the minimum variation market pilot programs. The current BSE filing, however, merely extends its pilot program for four months to permit additional information to be gathered and reviewed. The Commission believes that it would be more appropriate to address the issues raised by the comment letter in the context of proposals requesting permanent approval of the exchanges' stopping stock pilot programs.

[5] The Commission notes that, in certain narrow circumstances, a BSE specialist may execute a stopped order before limit order interest on the Exchange is exhausted. To do so, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, a double up or down tick or an out-of-range print.

Moreover, the specialist must follow certain procedures designed to ensure that the BSE's limit order book is adequately protected. First, the specialist must split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–03 and should be submitted by April 7, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder,[7] that specialist transactions must contribute to the maintenance of fair and orderly markets.

In its order approving the pilot procedures,[8] the Commission asked the BSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that received price improvement. In addition, the Commission encouraged the BSE to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock.

Although the BSE has begun to gather certain information requested by the Commission and to upgrade its technological capabilities in this regard, there has not been sufficient time since initial approval of the pilot program for the Exchange to produce conclusive results. The Commission believes that the BSE needs to submit comprehensive data on the operation of this rule and, in particular, on the impact on limit orders on the specialist's book before the Commission fairly can evaluate the BSE's use of its pilot procedures. To allow such information to be gathered and reviewed, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995. During this extension, the Commission expects the BSE to respond fully to the concerns set forth below.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[9] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in marketplace liquidity and the possibility of price improvement for the customer. Accordingly, those exchanges with stopping stock rules,[10] including the BSE, require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote. The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities markets.

Despite these potential benefits, the Commission continues to be particularly concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price. For that reason, the Commission has required that procedures for stopping stock in minimum variation markets be implemented on a pilot basis. These pilot programs have been extended until July 21, 1995, in order to allow the Commission and the relevant exchanges to determine whether the benefits of the practice substantially outweight the costs thereof.[11]

The Commission has concluded that it is appropriate to place the BSE on equal competitive footing with the other exchanges by extending its pilot program until July 21, 1995. Nevertheless, the Commission believes that the BSE rule, specifically the provisions regarding execution of stopped orders at an improved price before limit order interest at the price is exhausted,[12] raises certain unique issues. Accordingly, before the Commission would consider another extension or permanent approval of the

[6] 15 U.S.C. 78f(b) (1988).

[7] 17 CFR 240.11b–1 (1991).

[8] *See* 1994 Pilot Approval Order, *supra,* note 4.

[9] *See, e.g.,* SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[10] *See* NYSE Rule 116.30; American Stock Exchange (''Amex'') Rule 109; and Article XX, Rule 12 of the Chicago Stock Exchange (''CHX'') Rules. The relevant NYSE, Amex and CHX rules incorporate their pilot programs to permit specialists to stop stock in minimum variation markets. *See also* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange (''Phlx'') proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

[11] For further discussion of the NYSE, Amex and CHX pilot programs and the Commission's rationale for extending them until July 21, 1995, *see* Securities Exchange Act Release Nos. 35309 (January 31, 1995), 60 FR 7247 (February 7, 1995) (File No. SR–NYSE–95–02); 35310 (January 31, 1995), 60 FR 7236 (February 7, 1995) (File No. SR–Amex–95–01); and 35431 (March 1, 1995) (File No. SR–CHX–95–04).

[12] *See supra,* note 5.

Exchange's pilot program, the Commission would expect the BSE to submit comprehensive quantitative data on the impact of stopping stock in minimum variation markets on customer limit orders on the specialist's book and to demonstrate that the Exchange has the technological capabilities necessary to monitor specialist compliance with the pilot procedures.

At a minimum, the Commission requests that the BSE calculate (1) the average number of limit orders and the average number of shares on the book ahead of the stopped stock and (2) how much of that volume typically is executed by the close. Similarly, the Exchange should determine how often limit orders against which stock is stopped in a minimum variation market are executed by the close of the day's trading. This should include a one-day review of all book orders in the five stocks receiving the greatest numbers of stops.

Finally, in its order initially approving the BSE proposal, the Commission requested that the BSE determine how often stopped orders received price improvement and which investors were most affected by the pilot program. At this time, the Commission believes that further information is necessary to ensure that BSE specialists are handling stopped orders in a manner which is consistent with their obligation to maintain fair and orderly markets. Accordingly, the Exchange should continue to monitor (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that receive price improvement.

The Commission requests that the BSE submit a report describing its findings on the above matters by April 15, 1995. In addition, if the Exchange determines to request an extension of the pilot program beyond July 21, 1995, the BSE should submit to the Commission a proposed rule change by April 15, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[13]

It is therefore ordered, pursuant to Section 19(b)(2)[14] that the proposed rule change (SR–BSE–95–03) is hereby approved on a pilot basis until July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6571 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35469; File No. SR–DTC–95–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking to Establish a Procedure to Buy-in Securities to Eliminate Participants' Short Positions Older than Ninety Days

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 13, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–95–01) as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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

DTC proposes to establish a buy-in procedure to eliminate participants' short positions that are outstanding for more than ninety calendar 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, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. DTC 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

DTC currently employs procedures to help eliminate short positions caused by book entry deliveries of callable securities made between the call publication date and the lottery processing date and procedures to help eliminate short positions caused by rejected deposits.[2] Under DTC rules when DTC participants have short positions in their accounts, DTC debits the participants' accounts by an amount equal to 130% of the market value of the short position as determined by DTC. DTC believes collecting 130% of the value of the short position protects DTC against risk and provides participants with an incentive to cover short positions promptly. the charge is marked to the market until the short position is covered or matures.

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[13] No comments were received in connection with the proposed rule change that implemented these procedures. *See* Approval Order, *supra* note 4.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of DTC's procedures, refer to Securities Exchange Act Release No. 35034 (December 8, 1994), 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of procedures to recall certain deliveries which have created short positions as a

DTC is proposing procedures that will permit DTC to use the short position charge as a funding source to attempt to buy-in securities to cover short positions which have not been covered by participants within ninety days. Under the proposed procedures, once a short position has aged beyond ninety calendar days DTC will broadcast to participants that have long positions in the security an Invitation to Cover Short Request (''ICSR'') using the Participant Terminal System (''PTS'') operated by DTC.

The invitations will be offered at premiums above market value on a sliding scale set according to the following table:

SHORT POSITION VALUE

[Market value]

Minimum	Maximum	Premium percent	Maximum possible premium
$1	$50,000	12	$6,000
50,001	100,000	8	8,000
100,001	300,000	5	15,000
300,001	500,000	3	15,000
500,001	UP	2	(1)

1 Unlimited.

If DTC is unsuccessful in finding a seller through the ICSR function, long participants will be contacted by telephone. DTC may elect to use the services of a broker to obtain the securities at a price not to exceed the current market value plus the premium based upon the value of the short position.

If DTC is able to buy-in some or all of the securities needed to cover a participant's short position, DTC will: (1) credit the securities to the participant's account, (2) reduce the short position charges by the amount of the purchase price of the securities together with the expenses of the cover transaction including any brokerage fee or other administrative expense, and (3) if the short position has been eliminated entirely, credit the account of the participant with the balance, if any, of the short position charge.

DTC believes the proposal is consistent with its obligation under Section 17A of the Act to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because the procedures are modelled on existing DTC procedures used to eliminate short positions of participants whose DTC accounts have been closed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants concerning an earlier version of the proposed buy-in procedures were solicited by a DTC Important Notice dated July 29, 1994. DTC received comment letters from eleven organizations. Seven respondents opposed the earlier proposed version of the buy-in procedures. The commentators raised concerns about the potential risk of monetary loss that their organizations and clients could incur because of the procedures as proposed. Five commentators viewed the offering price range of 110–130% of market value as excessive and/or felt that the tiered approach (*i.e.*, offerings starting from 110% after ninety days, 120% after 120 days, and 130% after 150 days) would be counterproductive as sellers would ''hold out'' for the higher rate.

DTC revised the earlier version of the buy-in procedure to address the concerns raised with respect to seller ''hold-outs.'' The three-step invitation to tender successively at 110% of the current market value after 90 days, 120% after 120 days, and 130% after 150 days has been replaced by a single invitation after 90 days to tender at the current market value plus a premium ranging from 2–12% depending upon the current market value of the short position.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6572 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

3 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35468; File No. SR–MBSCC–95–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Billing Procedures

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 1, 1995, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. 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

MBSCC proposes to modify its Source Book billing procedures to implement a pricing policy that enables MBSCC to apply discounts and surcharges to participants' invoices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

On August 12, 1994, the Chicago Stock Exchange, Incorporated (''CHX'') sold all of its ownership interest in MBSCC, a wholly-owned subsidiary of CHX, to MBSCC's participants and the National Securities Clearing Corporation.[2] The Board of Directors of the newly-owned MBSCC has now determined to establish a pricing policy for MBSCC's clearing services. The purpose of the proposed rule change is to modify MBSCC's Source Book, Procedure IX, Billing, to implement a pricing policy that enables MBSCC to apply discounts and surcharges to participants' invoices. The proposed rule change enables MBSCC's Board of Directors to apply the pricing policy on a monthly, yearly, or other basis as determined by MBSCC's Board of Directors from time to time. This pricing policy will more accurately reflect the approximate costs of MBSCC's actual operations. MBSCC will implement the pricing policy commencing with participants' invoices for January 1995. Additionally, the proposed rule makes a technical change to MBSCC's Source Book to delete all references to Midwest Securities Trust Company.

MBSCC believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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)(iii)[3] of the Act and pursuant to Rule 19b–4(e)(3)[4] promulgated thereunder because the proposed rule change is concerned solely with the administration of MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6573 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35472; File No. SR–OCC–95–01]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Clarifying Rules Regarding the Unavailability of Current Index Values

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 23, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–01) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify the respective rights

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of the transaction, refer to Securities Exchange Act Release No. 34512 (August 10, 1994), 59 FR 42320 [File No. SR–MBSCC–94–3] (order granting accelerated approval of corporate governance changes to facilitate the sale of MBSCC).

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] 17 CFR 240.19b–4(e)(3) (1994).

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

and responsibilities of OCC and the options exchanges (''Exchanges'') in the event that the primary market for securities representing a substantial part of the value of an underlying index is not trading at the time when the current index value would ordinarily be determined or in the event that the current index value is unreported or otherwise unavailable for purposes of calculating the exercise settlement amount. The proposed rule change also makes certain technical changes in OCC's By-Laws and Rules governing index options and its proposed By-Laws and Rules governing Flexible Structured Index Options Denominated in a Foreign Currency (''FX Index Options'').[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, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 15, 1994, technical difficulties delayed the opening of the National Association of Securities Dealers Automated Quote System (''NASDAQ'') until 11:55 a.m., Eastern Time, nearly two and a half hours after the time trading normally begins. Prior to the delayed opening, however, transactions in NASDAQ listed securities occurred via telephone and the Instinet on-line trading system. Prices reported in connection with those transactions (''preopening prices'') had been transmitted to certain designated reporting authorities, and some or all of those reporting authorities used those prices in calculating values for certain stock indexes settling at the opening.

An issue arose that day as to whether the Exchanges would be able to provide OCC with settlement values for those indexes settling on the opening of the market whose component securities included NASDAQ listed issues. The Exchanges were concerned that they would be unable to provide OCC with settlement values prior to OCC's exercise processing cut-off time.

Fortunately, the designated reporting authorities were able to calculate and report the settlement values for the affected series to the Exchanges. The Exchanges, in turn, reported those settlement values to OCC in time for OCC to conduct its normal expiration processing. Although the Exchanges reported the settlement values somewhat later than usual, the late reporting did not have a significant impact on OCC's processing. In fact, OCC clearing member reports were not delayed at all.

While the NASDAQ incident was resolved without significant impact, the incident prompted OCC to take a closer look at its rules respecting the unavailability of current index values and to consider more fully what steps would be taken in such a situation. Following its review, OCC determined that certain technical changes should be made to its rules to clarify the respective rights and responsibilities of OCC and the Exchanges with respect to the reporting of current index values and the determination of settlement values.

During the NASDAQ event, OCC was prepared to exercise this authority had it become necessary. However, questions arose as to what prices OCC would use to fix exercise settlement amounts, and what the basis for that determination would be. OCC's proposed changes are intended to address those issues. OCC is proposing to amend its By-Laws, Article XVII, Section 4, which empowers OCC to fix an exercise settlement amount in the event that OCC determines that the current index value is unreported or otherwise unavailable.

First, the proposed rule change will make it clear that OCC has the authority to fix an exercise settlement amount whenever the primary market for securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value (*i.e.*, the value used for exercise settlement purposes) ordinarily would be determined. OCC believes that this authority is implicit in the language of the present By-Law because in such circumstances the current index value would generally be ''unreported or otherwise unavailable.'' However, the proposed rule change would make it explicit.

In addition, the proposed change assigns the responsibility for fixing exercise settlement amounts to a panel consisting of two designated representatives of each Exchange on which the affected series is open for trading, one of whom shall be such Exchange's representative on OCC's Securities Committee, and OCC's Chairman. This structure, which assigns the decision-making responsibility to an exchange-controlled panel, conforms to the way in which determinations with respect to adjustments to terms of FX index option contracts are made pursuant to Article XXIII, Section 4. The proposed change authorizes the panel to fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest including, without limitation, fixing the exercise settlement amount on the basis of the reported level of the underlying index at the close of trading on the last preceding trading day for which a closing index level was reported.

Identical changes also are being made to Article XXIII, Section 5, which governs the fixing of exercise settlement amounts for FX Index Options. Under these proposed changes, the situation contemplated by the last two sentences of the definition of ''expiration date'' in Article XXIII, Section 1.E.(3) (*i.e.*, where the primary market for underlying securities representing a substantial part of the value of an index is closed on an expiration date) will be explicitly covered by Article XXIII, Section 5. Therefore, the last two sentences of Article XXIII, Section 1.E.(3) have been deleted.

The remainder of the proposed changes to the By-Laws are technical changes, primarily for the purpose of conforming those By-Laws to changes approved in SR–OCC–94–08.[3]

OCC believes the proposed rule change is consistent with the requirements of the Act, specifically with Section 17A of the Act, and the rules and regulations thereunder because it will facilitate the prompt and accurate settlement of transactions in index options, flexibility structured index options, and FX Index Options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not sought or received comments on the proposed rule change.

[2] For a complete description of FX Index Options, refer to Securities Exchange Act Release No. 35149 (January 3, 1995), 60 FR 158, [File No. SR–OCC–94–08] (order approving proposed rule change).

[3] Supra Note 2.

OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–01 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6574 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35470; File No. SR–PHILADEP–94–6]

Self-Regulatory Organizations; the Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Extending the Pilot Program for the Fully Automated Securities Transfer Reconciliation Accounting Control System

March 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 14, 1994, the Philadelphia Depository Trust Company (''PHILADEP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to extend its pilot program governing the Fully Automated Securities Transfer Reconciliation Accounting Control System (''FASTRACS'') through December 29, 1995.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and 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. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of and the Statutory Basis for the Proposed Rule Change

On July 19, 1994, the Commission approved a proposed rule change establishing a pilot program for FASTRACS for the transfer of certain securities between PHILADEP and certain transfer agents.[2] FASTRACS is an automated program by which PHILADEP and the participating transfer agents use a master balance certificate to evidence the number of securities of a particular issue that are registered in PHILADEP's nominee name. The transfer agents have custody of the securities in the form of balance certificates registered in PHILADEP's nominee name. The balance certificates are adjusted daily to reflect PHILADEP's withdrawal and deposit activity.

According to PHILADEP, the pilot program has operated successfully in accordance with the operational and technical specifications; however, testing of the program is not complete.[3] PHILADEP therefore requests an extension of the FASTRACS pilot program on a temporary basis through December 29, 1995.

PHILADEP believes extending the program is consistent with Section 17A of the Act.[4] By providing an efficient mechanism for the transfer of securities positions to and from participating transfer agents, the programs should help foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and should facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of PHILADEP's FASTRACS, refer to Securities Exchange Act Release No. 34404 (July 19, 1994), 59 FR 38010 [File No. SR–PHILADEP–90–03] (order approving FASTRACS program on a temporary basis).

[3] Currently, PHILADEP has completed testing with two transfer agents who are now fully operational with FASTRACS. PHILADEP continues to conduct testing with a third transfer agent. Upon successful completion of testing with the third transfer agent, PHILADEP will file a proposed rule change under Section 19(b) of the Act to seek permanent approval of the FASTRACS program. Telephone conversation between Keith Kessel, Compliance Officer, PHILADEP and Margaret J. Robb, Attorney, Division of Market Regulation, Commission (December 22, 1994).

[4] 15 U.S.C. 78q–1 (1988).

as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule change that are filed with the Commission, and all written communications concerning the proposed rule change between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of PHILADEP. All submissions should refer to File Number SR–PHILADEP–94–6 and should be submitted by April 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6575 Filed 3–16–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Providence Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting on Friday, April 21, 1995 at 8 a.m. at the Providence Marriott, Charles at Orms Streets, Providence, Rhode Island 02904 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: March 10, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–6643 Filed 3–16–95; 8:45 am]

BILLING CODE 8025–01–M

Providence Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting on Friday, March 24, 1995 at 8:00 a.m. at the Providence Marriott, Charles at Orms Streets, Providence, Rhode Island 02904 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: March 10, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–6644 Filed 3–16–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradford Regional Airport, Bradford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Sherwood Anderson, Chairman of the Bradford Regional Airport Authority at the following address: Bradford Regional Airport Authority, Star Route, Box 176, Lewis Run, PA 16738.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bradford Regional Airport Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011, (717) 975–3423. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bradford Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 4, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1995

Proposed charge expiration date: June 30, 2013

Total estimated PFC revenue: $808,875

Brief description of proposed projects:

—Apron Rehabilitation
—Deicing Pad
—Master Plan Update
—Purchase ARFF Vehicle
—Runway 14/32 Lighting
—Parking Lot Overlay
—Snow Removal Equipment
—Expand Removal Equipment Storage Building
—Sewage/Water System
—Parallel Taxiway to Runway 14–32
—Runway 5/23 Lighting (impose Only)
—Airport Sign
—Terminal Building
—Runway 14–32 Rehabilitation

Class or classes of air carriers which the public agency has requested not be

[5] 17 CFR 200.30–3(a)(12) (1994).

required to collect PFCs: Air Taxi/ Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bradford Regional Airport Authority.

Issued in Jamaica, New York on March 10, 1994.

Anthony P. Spera,

Acting Manager, Airports Division Eastern Region.

[FR Doc. 95–6690 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–94–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before April 26, 1995 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The waiver petition is as follows:

Central Montana Rail, Incorporated (CM), FRA Waiver Petition Docket No. HS–94–5

The CM seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. CM states that it is not its intention to employ a train and engine service employee more than 12 hours under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. CM operates 83 miles of Class 2 track and 4 miles of Class 1 track between Moccasin Junction and Geraldine, Montana. Train movements are authorized by the yard limit rule and track warrant as stated in the General Code of Operating Rules. The maximum authorized operating speed is 25 mph.

The CM performs interchange service with the Burlington Northern Railroad Company at Moccasin Junction. The petitioner indicates that granting of the exemption will greatly facilitate their operation, is in the public interest, and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Issued in Washington, DC on March 10, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–6582 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–06–P

Waiver Petition Docket Number PB–94–3; Public Hearing

The National Railroad Passenger Corporation (Amtrak) has requested a waiver of compliance from certain provisions of the Railroad Power Brakes and Drawbars Regulations, Title 49 CFR Part 232. (see FR 37528, July 22, 1994). Amtrak is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 36 months to 48 months on all passenger cars equipped with 26–C Type Brake Equipment. Section 232.17(b)(2) states: ''Brake equipment on passenger cars must be clean, repaired, lubricated and tested as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S–045 in the Manual of Standards and Recommended Practices of the Association of American Railroads (AAR).'' Paragraph 2.1.2 of Standard S–045 (AAR Manual Section A, Part III) currently specifies 36 months for 26–C Type Brake Equipment.

The Federal Railroad Administration (FRA) has determined that a public hearing be held in this matter. Accordingly a public hearing is hereby set for 9:30 a.m. on April 6, 1995, at the Nassif Building, Conference Room 4236, 400 Seventh Street, SW., Washington, DC. The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA. The hearing will be a nonadversary proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition.

Issued in Washington, DC March 10, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–6581 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 94–98; Notice 2]

Decision That Nonconforming 1973 Ferrari Dino 246 GTS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1973 Ferrari Dino 246 GTS passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1973 Ferrari Dino 246 GTS), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective March 17, 1995.

FOR FURTHER INFORMATION CONTACT:

Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141 (a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc., of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 28, 1994 (59 FR 67002) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Fiat Auto U.S.A., Inc. (Fiat), the United States representative of Ferrari. In its comment, Fiat stated that Ferrari, and other companies within the Fiat Group, have invested considerable resources in the design and production of vehicles that comply with the Federal motor vehicle safety standards. Although it stated that it has not determined what modifications are necessary to bring a vehicle into compliance with the Federal safety standards, Fiat contended that it is not possible to achieve such compliance by simply retrofitting a vehicle built for the European market, without conducting extensive development and testing.

Because Fiat's comments did not specify how non-U.S. certified 1973 Ferrari Dino 246 GTS passenger cars are incapable of being readily altered to conform to the standards, there was no basis for NHTSA to solicit a response from the petitioner. As they have been performed with relative ease on thousands of vehicles imported over the years, none of the modifications described in the petition would preclude NHTSA from determining that non-U.S. certified 1973 Ferrari Dino 246 GTS passenger cars are eligible for importation. NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 107 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1973 Ferrari Dino 246 GTS not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1973 Ferrari Dino 246 GTS originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conformed to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 3014(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 14, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–6703 Filed 3–16–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 145–01]

Lend-Lease Functions and Trust Fund Receipts; Authority Delegation

Dated: March 10, 1995.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b) and Executive Order (E.O.) 9726, it is ordered that the liquidation of the transferred functions cited in E.O. 9726 are delegated to the Commissioner, Financial Management Service. The Commissioner may redelegate the authority transferred to such subordinates in the bureau as necessary.

a. E.O. 9726 (May 17, 1946) transferred to the Department the Office of Foreign Liquidation and all functions with respect to the maintenance of accounts and other fiscal records relating to lend-lease and reverse lend-lease, effective at the close of business on May 31, 1946.

b. The Commissioner, upon approval by the Fiscal Assistant Secretary, may make arrangements with any bureau, division, or office within the Department for the performance of functions pertaining to lend-lease or reverse lend-lease transferred under this Order.

2. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), it is ordered that the authority to effect covering of general, special and trust receipts into the Treasury is delegated to the Commissioner, Financial Management Service. The Commissioner may redelegate the authority transferred herein to such subordinates in the bureau as deemed necessary. Such receipts will be considered as covered and officially acknowledged on the date they are entered in the records of the Financial Management Service. Paragraph 6. of the Joint Regulations No. 4, revised, issued by the Secretary of the Treasury and Comptroller General of the United States on April 29, 1955, provides:

The requirements of existing law that warrants be issued and countersigned to acknowledge the receipt of moneys to be covered in the Treasury are hereby waived. For the purposes of Section 305 of the Revised Statutes, as amended (31 U.S.C. 147), moneys received and covered into the public Treasury shall be deemed to be officially acknowledged when the receipt of such moneys, for credit to the receipt accounts or appropriation and fund accounts maintained pursuant to the Act of July 31, 1894, as amended (31 U.S.C. 1019), and Section 114(b) of the Budget and Accounting Procedures Act of 1950, is recorded by the Treasury offices designated for that purpose by the Secretary of the Treasury.

Frank N. Newman,

Deputy Secretary of the Treasury.

[FR Doc. 95–6638 Filed 3–16–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Order 107–05]

Communications With the White House Regarding Open Investigations, Adjudications or Civil and Criminal Enforcement Actions

Dated: March 2, 1995.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b) and 5 U.S.C. 301 and 302, I hereby issue the following procedures for communications between the Department of the Treasury and the White House regarding open Department investigations, adjudications or civil or criminal enforcement actions.

1. General Procedures

a. *General Policy.* In order to ensure the President's ability to perform his constitutional obligation to ''take care that the laws be faithfully executed,'' it is the policy of the Treasury Department to provide the White House with information on open investigations, adjudications, or civil (including administrative or regulatory) or criminal enforcement actions pending before or within any regulatory or law enforcement agency within the Department, where important for the performance of the President's duties, where appropriate from a law enforcement and regulatory perspective and where consistent with these procedures.

b. *Referral Procedures.* The below listed procedures are established to ensure the flow of appropriate information between the Department and the White House. Central to these procedures is the need for consultation with Department senior policy officials, [1] including the General Counsel. The General Counsel is authorized to issue more detailed guidance should he or she determine it to be necessary.

OPI: AGC (Enforcement)

(1) *Action to be Taken by Department Employees/Senior Policy Officials.* If a Department employee determines that a matter involving an open investigation, adjudication, or enforcement action under his or her jurisdiction should be communicated to the White House, he or she shall inform, through the appropriate Department senior policy official, the General Counsel about this matter.

(2) *Action to be Taken by Treasury Bureau Employees/Bureau Heads.* If an employee of a Treasury law enforcement or financial regulatory bureau or the Office of Foreign Assets Control (''Treasury Bureau'') believes that a matter involving an open investigation, adjudication or enforcement action under his or her jurisdiction should be communicated to the White House, he or she shall contact, through the Treasury Bureau head, the Department senior policy official to whom that Treasury Bureau head directly reports. If the senior policy official concurs with that recommendation, he or she shall then inform the General Counsel about this matter.

(3) *General Counsel Review and Final Determination.* The General Counsel shall provide the Department senior policy official with his or her recommendation concerning the advisability of disclosing the information to the White House. The General Counsel is authorized to preclude transmittal of the information on legal or ethical grounds. If the General Counsel believes that disclosure should not be made based on other than legal or ethical grounds, the General Counsel shall inform the appropriate senior policy official of this recommendation.

(4) *Other Final Determinations.* Unless precluded on legal or ethical grounds by the General Counsel, the Department senior policy official referred to in paragraph 1.b.(1) or 1.b.(2) shall make the final determination on whether the information should be communicated to the White House. If the Department senior policy official determines that such information should be communicated to the White House, he or she shall request the General Counsel to make the initial communication.

c. *Communications.*

(1) *Initial Contact with White House.* Initial communications between the White House and the Treasury Department regarding any pending Department investigation, adjudication or criminal or civil enforcement action shall involve only the Counsel to the President or the Deputy Counsel and the General Counsel or the Deputy General Counsel. No Treasury or bureau employee shall initiate communications on these matters with the White House other than as provided in paragraph 1.c. Any Treasury or bureau employee in possession of information pertaining to any pending criminal referrals and criminal investigations shall keep the information in strict confidence and shall not disclose the information to any person except in accordance with applicable law, Treasury standards and this Order.

(2) *Continuing Contact.* After the initial contact, further contact on a matter deemed appropriate for communications pursuant to this Order shall be directed to the White House Counsel's Office by the General Counsel, the Deputy General Counsel or the appropriate senior policy official designated by the General Counsel or any other lawyer in the Office of the General Counsel, as designated by the General Counsel.

d. *Writing Requirements.* All proposals and decisions involving open Department investigations, adjudications or enforcement actions discussed herein that either propose or result in communications with the White House shall be detailed in contemporaneous, written memoranda.

(1) *Treasury Bureau Heads and Department Senior Policy Officials.* All requests from Treasury Bureau Heads to Department senior policy officials and from Department senior policy officials to the General Counsel requesting a communication to the White House concerning an open investigation, adjudication or enforcement action shall be in writing. Such memoranda shall explain why the communication of information is important for the performance of the President's duties and appropriate from a law enforcement perspective.

(2) *General Counsel.* The General Counsel shall also issue in writing his or her legal or ethical recommendation to the appropriate Department senior policy official in response to such request for communication with the White House.

(3) *Emergency Situations.* If an emergency situation is present, the memoranda requested by paragraph 1.d. may be prepared as soon as practicable thereafter.

e. *Information Requests by the White House.* Requests by the White House for information concerning open Department investigations, adjudications or civil or criminal enforcement actions shall be referred in all cases to the General Counsel. The General Counsel shall ensure that such requests are processed consistent with the provisions of this Order and any applicable White House guidance.

2. Open Investigations, Adjudications or Enforcement Actions Directly Involving the White House

a. *Contacts Directly Involving the White House.* If the President, the Vice-President, a member of their families, a senior advisor or an employee of an office which the Chief of Staff (or any similar successor position) directly supervises, is an actual or potential

[1] Department senior policy officials shall include those Treasury officials at the Assistant Secretary level and above as set forth in Treasury Order 101–05 and the organization chart attached thereto.

subject, target or witness of an open investigation, adjudication or enforcement action under the jurisdiction of the Treasury Bureaus, the determination of whether it is appropriate to disclose this information to the White House shall be made in accordance with this Order taking into consideration, among other things, the following:

(1) whether disclosure would detrimentally affect the fundamental operation of an agency or other organization in the executive branch of the federal government;

(2) whether disclosure of the information would promote or reduce the public confidence and trust in the integrity of elected officials and public servants or the Department's regulatory and law enforcement activities;

(3) whether there exists an immediate threat of harm or injury to White House persons or property which disclosure will help to avoid;

(4) whether the matter involves any sensitive or urgent national security or foreign policy concern that should be brought to the White House's attention;

(5) whether disclosure of the information would interfere or assist with the Department's law enforcement and regulatory mission or an ongoing law enforcement or regulatory activity; and

(6) whether non-disclosure could cause the White House to convey inaccurate or misleading information to the public.

b. *Secretary/Deputy Secretary Consultation.* The Deputy Secretary shall be informed prior to any Department communications with the White House involving the matters subject to paragraph 2. The Deputy Secretary, in turn, may consult with the Secretary. The Secretary or Deputy Secretary may consult with the Attorney General or any other appropriate senior government official concerning the advisability of such disclosure or non-disclosure.

c. *Procedures.* Subject to the procedures specified in paragraph 2., the procedures described in paragraph 1. herein shall apply to the communications described in paragraph 2.

3. *SCOPE.* In the day-to-day functioning of the Department, there exist activities necessary to carry out the Department's law enforcement and regulatory mission. These may include routine law enforcement contacts, including administrative and regulatory contacts, designed to collect information through document requests, interviews, depositions or otherwise. Nothing in this Order shall be construed to amend the Department's current approach with respect to its handling of these routine activities.

In addition, the procedures set forth in this Order do not apply to the following circumstances.

a. Any communication subject to a specific statutory provision prohibiting or governing the disclosure of the information. (*See, e.g.,* 12 U.S.C. 1462a(b)(3) and 26 U.S.C. 6103.)

b. Communications between the Secret Service and the White House concerning the Service's protective responsibilities.

c. Communications between a Treasury Bureau and the National Security Council concerning open investigations or cases, if such disclosure is necessary for the conduct, determination or coordination of national security or foreign policy issues.

d. Communications between the Department and the White House appropriate to properly respond to inquiries or requests for information or documents in the form of (i) civil and criminal discovery requests; (ii) subpoenas, including but not limited to, grand jury and congressional; (iii) other congressional requests for documents and information; and (iv) any other requests for information and documents authorized by law; provided that the exception created by paragraph 3.d. shall not apply to requests for information pertaining to those officials and individuals identified in paragraph 2. who are the subject, target or witness in an open investigation, adjudication or enforcement action.

e. Communications between the Department and the White House appropriate to formulate an Administration position with respect to judicial review or settlement of pending litigation.

f. Tax, security and background checks on prospective Federal employees and appointees, including Executive and Judicial Branch appointments under consideration by the President or the Department.

g. Communications between the Inspector General or his or her authorized officials and the White House in furtherance of the duties and responsibilities of the Inspector General undertaken pursuant to the Inspector General Act of 1978, 5 U.S.C.A. App. 3.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 95–6639 Filed 3–16–95; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 52

Friday, March 17, 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).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, March 24, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 3, 1995 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Appointments to the Indian State Advisory Committee
VI. Chicago Hearing Report
VII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,

Solicitor.

[FR Doc. 95–6709 Filed 3–14–95; 4:09 pm]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 21, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: 1994 Year-End Financial Management Report.

Memorandum and resolution re: (1) Final rule in the form of 5 C.F.R. Part 3201, entitled ''Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation,'' which establishes uniform standards of ethical conduct for employees of the Corporation to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics; and (2) final amendments to Part 336 of the Corporation's rules and regulations, entitled ''Employee Responsibilities and Conduct,'' which (a) remove and reserve subparts A, B, C, E, and F, sections 336.1–336.23, and sections 336.29–336.37, (b) remove the appendix, and (c) add a new section 336.1 to provide a cross-reference to the Corporation's supplemental ethical conduct regulation to be codified at 5 C.F.R. Part 3201, the Corporation's supplemental financial disclosure regulation at 5 C.F.R. Part 3202, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 C.F.R. Parts 2634 and 2635.

Memorandum and resolution re: Recommendation regarding the request that Part 344 of the Corporation's rules and regulations, entitled ''Recordkeeping and Confirmation Requirements for Securities Transactions,'' be amended to delete the requirement that the amount of a bank's remuneration be disclosed with respect to mutual fund transactions effected for customers.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 359 to be entitled ''Golden Parachute and Indemnification Payments,'' and proposed amendments to Part 303 of the Corporation's rules and regulations, entitled ''Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation,'' which would (1) limit golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions and depository institution holding companies; and (2) delegate to the Executive Director for Supervision, Resolutions, and Compliance, the Director of the Division of Supervision, or their designees, the authority to approve or deny certain requests.

Memorandum and resolution re: Guidelines for the establishment of an independent intra-agency appellate process to review material supervisory determinations as required by the Riegle Community Development and Regulatory Improvement Act of 1994, which guidelines are intended to clarify the types of determinations that are eligible for review and establish the process by which appeals will be considered and decided.

Memorandum and resolution re: (1) Final amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled ''Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation,'' and ''Rules of Practice and Procedure,'' respectively, and (2) amendments to the Corporation's rules and regulations in the form of a new Part 364, entitled ''Standards for Safety and Soundness,'' which establish deadlines for submission and review of safety and soundness compliance plans, and set forth Interagency Guidelines Establishing Standards for Safety and Soundness.

Memorandum and resolution re: Notice of withdrawal of proposed amendments to the Corporation's rules and regulations in the form of a new Part 334, entitled ''Contracts Adverse to Safety and Soundness of Insured Depository Institutions,'' which would have implemented the statutory prohibition on contracts that adversely affect the safety and soundness of insured depository institutions.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled ''Capital Maintenance,'' which would, in implementing section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994, have the effect of lowering the capital requirement for small business loans and leases on personal property that have been transferred with recourse by qualified insured depository institutions.

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled ''Capital Maintenance,'' which will, in implementing section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, have the effect of correcting the anomaly that currently exists in the risk-based capital treatment of recourse transactions under which an institution would be required to hold capital in excess of the maximum amount of loss possible under the contractual terms of the recourse obligation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 14, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–6743 Filed 3–15–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, March 14, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's supervisory activities.

Application of Allied Bank of Georgia, Thomson, Georgia, for consent to purchase certain assets of and assume the liability to pay deposits made in the Washington Branch of First Union National Bank of Georgia, Atlanta, Georgia, and for consent to establish the Washington Branch of First Union National Bank of Georgia as a branch of Allied Bank of Georgia.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: March 14, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–6832 Filed 3–15–95; 3:04 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6725 Filed 3–15–95; 11:37 am]

BILLING CODE 6210–01–P

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: April 18—April 20, 1995, 9:00 a.m. to 5:00 p.m.

LOCATION: Radisson Barcelo Hotel Washington, 2121 P Street, NW., Washington, DC (202) 293–3100.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by April 7, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council shall be open to the public.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
ADA Town Meeting Tour Update
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 14, 1995.

Speed Davis,

Acting Executive Director.

[FR Doc. 95–6722 Filed 3–15–95; 8:45 am]

BILLING CODE 6820–BS–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 20, 1995.

An open meeting will be held on Tuesday, March 21, 1995, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, March 21, 1995, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9) (A) and (10) and 17 CFR 200.402(a)(4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, March 21, 1995, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Ahmed Mohamed Soliman, a registered investment adviser and formerly a registered representative, from the decision of an administrative law judge. For further information, please contact Kathleen A. O'Mara at (202) 942–0923.

The subject matter of the closed meeting scheduled for Tuesday, March 21, 1995, following the 10:00 a.m. open meeting will be:

Post oral argument discussion.
Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascretain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 16, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6840 Filed 3–15–95; 3:48 pm]

BILLING CODE 8010–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, March 23, 1995, 9:00 a.m.–5:30 p.m.

LOCATION: 1550 M Street NW., Washington, DC 20005, First Floor (Lobby) Conference Room.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-ninth Meeting of the Board of Directors; Chairman's Report; President's Report; General issues; Selection of Solicited Grants; Selection of 1995–1996 Fellows for Jennings Randolph Fellowship Program.

CONTACT: Mr. Wilson Grabill, Public Affairs Specialist, Public Affairs and Information Office, Telephone: (202) 457–1700.

Dated: March 13, 1995.

Charles E. Nelson,

Vice President, United States Institute of Peace.

[FR Doc. 95–6830 Filed 3–15–95; 3:02 pm]

BILLING CODE 3155–01–M

Corrections

Federal Register

Vol. 60, No. 52

Friday, March 17, 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

Food and Consumer Service

RIN 0584-AB97

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

Correction

In notice document 95–637 beginning on page 2730 in the issue of Wednesday, January 11, 1995, make the following correction:

On page 2731, in the table, in the sixth column (Guam), in the Household size for 5, the maximum allotment amount now reading ''767'' should read ''676''.

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

Houston Lighting and Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

Correction

In notice document 95–3375 appearing on page 8100, in the issue of Friday, February 10, 1995, make the following correction:

In the first column, in the second paragraph, the last line was inadvertently omitted. The last line should read ''should be changed to read ''March 1, 1995''.''

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 95-20]

RIN 1515-AB70

Prehispanic Artifacts From El Salvador

Correction

In rule document 95–6122 beginning on page 13351 in the issue of Friday, March 10, 1995, the cover page subject heading which reads ''Prehistoric Artifacts From El Salvador'' should read ''Prehispanic Artifacts From El Salvador''

BILLING CODE 1505–01–D

Friday
March 17, 1995

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Patent Appeal and Interference Practice; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950207044–5044–01]

RIN 0651–AA71

Patent Appeal and Interference Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases relating to patent appeal and interference proceedings. The changes include amendments to conform the interference rules to new legislative requirements and a number of clarifying and housekeeping amendments.

EFFECTIVE DATE: This document is effective April 21, 1995, except § 1.11(e) which is effective March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 603–3361 or by mail marked to the attention of Fred E. McKelvey at P.O. Box 15647, Arlington, Virginia 22215.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** (59 FR 50181) on October 3, 1994, and in the Official Gazette of the Patent and Trademark Office (1167 Off. Gaz. Pat. Office 98) on October 25, 1994. In response to a request for written comments, twenty-six written comments were received. A public hearing was held on December 7, 1994, at which four witnesses testified. The written comments and the suggestions made at the public hearing represent the views of fifteen individuals and corporations and three patent law associations, namely, the Committee on Interferences of the American Bar Association, the Interference Committee of the American Intellectual Property Law Association and the Japan Intellectual Property Association. These comments and suggestions are addressed below in the discussion of the rule changes to which they pertain. A number of suggested rule changes, though meritorious, cannot be adopted at this time because they are believed to be outside the scope of the present rulemaking. Accordingly, those suggestions will be the subject of a future rulemaking.

The provisions of the rules, as amended, will be applied in pending interferences to the extent reasonably possible. However, it is the desire of PTO to avoid applying the rules, as adopted, to pending interferences where substantial prejudice would result. For example, generally speaking, in cases where the periods for filing preliminary motions and preliminary statements have been set, the current preliminary motion and preliminary statement rules will apply, although parties are free to voluntarily comply with the rules as amended. Generally speaking, in cases where the testimony periods have been set, the current testimony and record rules will apply. The question of whether substantial prejudice will result in a particular case is a matter within the discretion of the administrative patent judge or the Board.

I. Amendments Responsive to Adoption of Public Laws 103–182 and 103–465

As indicated in the Notice of Proposed Rulemaking, several of the amendments to the interference rules (i.e., 37 CFR 1.601 *et seq.*) are responsive to Public Law 103–182, 107 Stat. 2057 (1993) (North American Free Trade Agreement Implementation Act, hereinafter NAFTA Implementation Act), which amended 35 U.S.C. 104 to permit an applicant or patentee, with respect to an application filed on or after December 8, 1993, to rely on activities occurring in a ''NAFTA country'' to prove a date of invention no earlier than December 8, 1993, except as provided in 35 U.S.C. 119 and 365. On December 8, 1994, which was subsequent to publication of the Notice of Proposed Rulemaking, Public Law 103–465, 108 Stat. 4809 (1994) (Uruguay Round Agreements Act) was signed into law, which further amended 35 U.S.C. 104 to permit an applicant or a patentee, with respect to an application filed on or after January 1, 1996, to rely on activities occurring in a WTO member country to prove a date of invention no earlier than January 1, 1996, except as provided in 35 U.S.C. 119 and 365. Section 104, as amended by Public Law 103–465, reads as follows:

Section 104. Invention made abroad.

(a) IN GENERAL.—

(1) PROCEEDINGS.—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country or a WTO member country, except as provided in sections 119 and 365 of this title.

(2) RIGHTS.—If an invention was made by a person, civil or military—

(A) while domiciled in the United States, and serving in any other country in connection with operations by or on behalf of the United States,

(B) while domiciled in a NAFTA country and serving in another country in connection with operations by or on behalf of that NAFTA country, or

(C) while domiciled in a WTO member country and serving in another country in connection with operations by or on behalf of that WTO member country,

that person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States, that NAFTA country, or that WTO member country, as the case may be.

(3) USE OF INFORMATION.—To the extent that any information in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Patent and Trademark Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) DEFINITIONS.—As used in this section—

(1) the term 'NAFTA country' has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act; and

(2) the term 'WTO member country' has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.

Section 2(4) of the NAFTA Implementation Act is codified at 19 U.S.C. 3301; § 2(10) of the Uruguay Round Agreements Act is codified at 19 U.S.C. 3501.

The Notice of Proposed Rulemaking proposed adding a new paragraph (r) to § 1.601 defining ''NAFTA country'' to mean ''NAFTA country'' as defined in section 2(4) of the NAFTA Implementation Act and ''non-NAFTA country'' to mean a country other than a NAFTA country. One comment questioned whether ''NAFTA country'' should be defined in the rules to include the United States. The answer is no. ''NAFTA country'' as used in 35 U.S.C. 104 has the meaning given that term in section 2(4) of the NAFTA Implementation Act, which refers to only Canada and Mexico. Another comment observed that the proposed terms ''NAFTA country'' and ''non-NAFTA country'' do not appear to contemplate that inventive acts may occur in a foreign place that is not part of any ''country'' and suggested either using the phrase ''outside the United States or a NAFTA country'' instead of ''non-NAFTA country'' or else defining ''non-NAFTA country'' to mean ''a *place* other than the United States or a NAFTA country.'' The comment is well

taken. In view of the comment and the amendment of 35 U.S.C. 104 by the Uruguay Round Agreements Act to permit reliance on activities in WTO member countries, the proposed term ''NAFTA country'' is replaced in §§ 1.622, 1.623, 1.624 and 1.628, which set forth the requirements for preliminary statements and for correcting preliminary statements, by the phrase ''NAFTA country or WTO member country'' and the proposed term ''non-NAFTA country'' is replaced by the phrase ''place other than the United States, a NAFTA country or a WTO member country.'' Furthermore, the references in §§ 1.622(b) and 1.623(a) to the ''second sentence of 35 U.S.C. 104'' have been changed to ''35 U.S.C. 104(a)(2)'' to reflect the fact that 35 U.S.C. 104 as amended by the Uruguay Round Agreements Act includes paragraphs (a) (1), (2) and (3). For example, § 1.622(b) is revised to read:

(b) The preliminary statement shall state whether the invention was made in the United States, a NAFTA country (and, if so, which NAFTA country), a WTO member country (and if so, which WTO member country), or in a place other than the United States, a NAFTA country, or a WTO member country. If made in a place other than the United States, a NAFTA country, or a WTO member country, the preliminary statement shall state whether the party is entitled to the benefit of 35 U.S.C. 104(a)(2).

For the above-stated reasons, § 1.601 is revised by adding new paragraph (r), which, as proposed, defines ''NAFTA country'' to have the meaning given that term in section 2(4) of the North American Free Trade Act Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (1993). However, since, as noted above, the term ''non-NAFTA country'' is not being adopted, the proposal to also define that term in § 1.601(r) is hereby withdrawn. Section 1.601 is also revised to include a new paragraph (s) that defines ''WTO member country'' to have the meaning given that term in section 2(10) of the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809 (1994).

Section 1.684, which relates to the taking of testimony in a foreign country, is removed and reserved in view of the amendments to §§ 1.671–72. Section 1.672 is amended by revising paragraph (a), revising current paragraph (b) and redesignating parts of it as new paragraphs (b), (c) and (d), removing and reserving paragraph (c) and redesignating it as new paragraph (e), revising paragraphs (d) and (e) and redesignating them as new paragraphs (f) and (g), and redesignating paragraph (f) as new paragraph (h).

Specifically, the Notice of Proposed Rulemaking proposed amending § 1.672(a) to require that ''testimony not compelled under 35 U.S.C. 24 or compelled from a party or in another country'' be taken only by affidavit. Several comments questioned whether the term ''compelled'' also applies to the phrase ''in another country'' and suggested inserting ''compelled'' before that phrase if that is the intent. Inasmuch as the comment correctly states the intent, the suggestion in the comment is being adopted.

One comment supported limiting non-compelled direct testimony to affidavits on the ground that it will reduce the cost of submitting testimony-in-chief and will eliminate economic harassment by a more affluent party of a less affluent opponent, since the less affluent opponent will no longer be required to pay the expense of counsel to attend depositions called by the more affluent party for taking direct testimony. Several comments were opposed, maintaining that affidavits are inherently less credible than live testimony. One comment states:

Ours is the only country that supports interferences and we should be proud of it, because it demonstrates our commitment to the concept that it is more important to seek right and justice than to settle for a single arbitrary rule of convenience, no matter how convenient. Even if we don't always secure the right result, at least we try. As we invite the rest of the world to become full participants in this uncommon philosophy, we should endeavor to present it in its best light.

How we conduct a trial is a centerpiece of our judicial system. Our interference trial by deposition is a reasonable compromise from a trial in a courtroom type setting. But a trial by affidavit is no trial at all! Affidavits are inevitably contrived, artificial, and often argumentative. They cannot substitute for the extemporaneous words of a witness (even if well coached), and cross-examination is not likely to reconstruct the real truth. Even if it is just in a nuance of expression, it is gone.

The current approach of providing a choice between deposition and affidavit testimony is difficult to accept, but at least it is justifiable on the basis that so many patent attorneys simply don't know how to conduct a deposition, while they do have some experience with affidavits. But the proposal to make affidavits mandatory for direct testimony is contrary to my understanding of American jurisprudence.

Direct testimony on behalf of a party by oral deposition is said to be advantageous to the opponent in that the testimony is the witness' own, the demeanor of the witness can be observed by the opponent (but demeanor is not observed by any member of the Board), and cross-examination can be carried out without a period during which it is said that the witness can be coached in preparation for cross-examination. However, under current practice a party can elect to deprive its opponent of these advantages by electing to use affidavits. Deposition testimony is also said to be advantageous to the party offering the testimony, who may find it more convenient to present the witness at a single deposition for direct and cross-examination than to first prepare an affidavit for direct testimony and later produce the witness at a deposition for cross-examination by an opponent. These supposed advantages are believed to be outweighed by the advantages of requiring that direct non-compelled testimony be in affidavit form. As recognized by those who favor direct testimony by affidavit, there are at least two advantages to taking direct testimony by affidavit, i.e., (1) Reducing the cost of presenting a party's own direct testimony and (2) avoiding the expense of attending an opponent's depositions for direct testimony. There are a number of other advantages when direct testimony is taken by affidavit rather than deposition. First, because an opponent will have seen all of the party's direct testimony prior to beginning cross-examination, the opponent should be able to carry out a more pointed and efficient cross-examination, thereby avoiding the need to recall a witness for further examination during the opponent's rebuttal case, which can be costly in time and expense to both the party and the opponent. Second, a party presenting direct testimony by affidavit is less likely to inadvertently, and perhaps fatally, omit an essential part of its proofs than when presenting direct testimony by oral deposition. Third, affidavit testimony will be advantageous to the Board because affidavit testimony can be evaluated more expeditiously than can deposition transcripts, which frequently present the facts in an incoherent manner and too often include a considerable amount of disruptive attorney colloquy. Fourth, in the case of direct testimony by persons testifying in a foreign language, testimony by affidavit (in the English language) should be considerably less cumbersome than testimony by oral deposition through translators.

Two comments suggested that there may be cases in which both parties find it mutually convenient to present their direct testimony by oral deposition and that under these circumstances the administrative patent judge should be allowed to authorize such depositions. The suggestion is not being adopted,

because it would eliminate the above-noted advantages of reducing the likelihood of omitting an essential part of the proofs and having the Board consider direct testimony presented in a more coherent form.

Another comment suggested that there appears to be no need why all testimony abroad must be by oral deposition, noting, for example, that a third-party witness may be willing to give an affidavit comprising the direct testimony, provided cross-examination will be conducted in the witness's home country. Still another comment asked how the parties should handle a situation where a party's witness residing in a foreign country, due to health or other serious impediment, is unable to travel to the United States for cross-examination, but is willing to testify in the foreign country, which allows testimony, for example, only by written interrogatories. The answer in both situations, as well as in other unusual situations not provided for by the rules, is to file a motion (§ 1.635) for permission to take the testimony in a manner other than by deposition. The motion may or may not be granted depending on the particular circumstances. In order to make it clear that the administrative patent judge and the Board have discretion in unusual circumstances to grant appropriate relief, § 1.672 is further revised by adding a new paragraph (i) reading as follows:

(i) In an unusual circumstance and upon a showing that testimony cannot be taken in accordance with the provisions of this subpart, an administrative patent judge upon motion (§ 1.635) may authorize testimony to be taken in another manner.

Section 1.672(b), as it was proposed to be revised in the Notice of Proposed Rulemaking, includes a requirement that a party presenting testimony of a witness by affidavit, within the time set by the administrative patent judge for serving affidavits, file a copy of the affidavit. Since, for reasons discussed *infra*, § 1.671(e) is being retained in modified form rather than being removed and reserved, as was proposed, § 1.672(b) as adopted, like current § 1.672(b), permits a party to file a copy of the affidavit or, if appropriate, a notice under 1.671(e). If the affidavit relates to a party's case-in-chief, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-chief. If the affidavit relates to a party's case-in-rebuttal, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-rebuttal. A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on anything mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document.

As proposed in the Notice of Proposed Rulemaking, a new paragraph (c) is added to § 1.672 stating that where an opponent objects to the admissibility of any evidence contained in or submitted with an affidavit, the opponent must file and serve objections stating with particularly the nature of the objection. Any objection should identify the specific Federal Rule of Evidence that renders the evidence inadmissible and shall explain why the Rule applies to the evidence sought to be introduced. No oppositions to the objections are authorized. Rather, the party may respond by filing supplemental evidence in the form of affidavits, official records and printed publications. Alternatively, the party may determine that the objection is without merit and do nothing. One comment suggested that ''supplemental affidavits and supplemental official records and printed publications'' in the third sentence of § 1.672(c) as proposed be changed to ''one or more supplemental affidavits, official records or printed publications.'' The suggestion is being adopted. The same or similar changes have been made in the third sentence of § 1.682(c) and in the third sentence of § 1.683(b); in the third sentence of § 1.688(b) ''supplemental affidavits'' has been changed to ''one or more supplemental affidavits.'' Section 1.672(c) further provides that any objections to the admissibility of any evidence contained in or submitted with a supplemental affidavit shall be made only by a motion to suppress under § 1.656(h).

As proposed in the Notice of Proposed Rulemaking, § 1.672 is revised by adding a new paragraph (d) requiring any cross-examination of an affiant to be by deposition at a reasonable location within ''the United States,'' which is defined in § 1.601(p) and 35 U.S.C. 100(c) to mean ''the United States of America, its territories and possessions.'' For purposes of the interference rules, the term ''territories and possessions'' is broadly construed to refer to all territories and possessions of the United States, including, for example, the Commonwealth of Puerto Rico.

An opponent who believes that a party is producing an affiant for cross-examination in an ''unreasonable'' location may move (§ 1.635) for entry of an order by an administrative patent judge to set the location of the deposition for cross-examination. Paragraph (d) also requires that the party whose witness is to be cross-examined give notice of the deposition under § 1.673(e), obtain a court reporter and provide a translator if the witness will not testify in English. Although not expressly set forth in the rules as amended, it should be understood that any party attending the deposition can bring its own translator or the parties can agree to share the cost of a single mutually agreeable translator.

Comments were received against the proposal that § 1.672(d) require cross-examination of affiants to be conducted by oral deposition ''at a reasonable location within the United States.'' One comment suggested that requiring a witness who resides in a foreign country to travel to the United States for cross-examination will be extremely inconvenient where the witness is a key person for a company. The comment also suggested that the term ''United States'' be amended to additionally include U.S. embassies and/or consulates in foreign countries, at least for purposes of conducting cross-examination. The suggestion is not being adopted. Given the time differences between the United States and Europe or the United States and Asia, it is highly likely that administrative patent judges would not be on duty to rule on telephonic requests for admissibility of evidence. Furthermore, a party whose witness is to testify on cross-examination at a ''trial'' (i.e., interference proceeding) in the United States should produce the witness for cross-examination at a reasonable location within the United States. Finally, in view of PTO's general lack of experience regarding procedures for, and difficulties which may arise in, taking deposition testimony in a foreign country, PTO has decided, at least for the time being, to take a conservative approach regarding taking testimony in a foreign country. The approach will be reevaluated after PTO gains some experience with foreign deposition testimony taken pursuant to § 1.671(h).

One comment suggested inserting a comma after ''reporter'' in the fifth sentence of proposed § 1.672(d), as well as in the fifth sentences of proposed §§ 1.682(d), 1.683(c) and 1.688(c). The suggestion is being adopted.

The Notice of Proposed Rulemaking proposed to redesignate current § 1.672(d) (''When a deposition is authorized under this subpart, if the parties agree in writing, the deposition may be taken before any person

authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.'') as § 1.672(f). One comment questioned whether § 1.672(f) (former § 1.672(d)) applies to cross-examination deposition testimony authorized by §§ 1.672(d), 1.673(a), 1.682(d), 1.683(c) and 1.688(c). Implicit in the comment is a question of whether proposed § 1.672(f) would authorize the parties, with respect to deposition testimony that has been authorized by the rules or by an administrative patent judge to be taken in the United States, to agree to take the deposition outside the United States. For the reasons discussed above, the parties may not agree, absent the permission of an administrative patent judge or the Board, to take a deposition outside the United States. Accordingly, § 1.672(f), as amended, provides that depositions authorized to be taken within the United States are to be taken within the United States: ''When a deposition is authorized to be taken within the United States under this subpart and if the parties agree in writing, the deposition may be taken in any place within the United States, before any person authorized to administer oaths, upon any notice, and in any manner, and when so taken may be used like other depositions.''

Current § 1.672(e), which is being redesignated as § 1.672(g), reads as follows: ''If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit without opportunity for cross-examination. The affidavit shall be filed in the Patent and Trademark Office.'' Although not proposed in the Notice of Proposed Rulemaking, this section is revised to be consistent with the other amendments to §§ 1.671–73 so as to read as follows: ''If the parties agree in writing, the affidavit testimony of any witness may be submitted without opportunity for cross-examination.''

As proposed in the Notice of Proposed Rulemaking, current § 1.672(f), which concerns the filing of agreed statements setting forth how a particular witness would testify if called or the facts in the case of one or more of the parties, is redesignated as § 1.672(h).

In addition to the proposed amendments discussed above, current § 1.672(b) is revised, as proposed in the ''Miscellaneous Amendments'' part of the Notice of Proposed Rulemaking, by deleting the third sentence, which specifies the type of paper to be used for affidavits, as superfluous in view of § 1.677(a); and in paragraph (d), the fifth sentence (''A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a).'') is removed as superfluous in view of the second sentence of new § 1.672(d).

In § 1.671, the Notice of Proposed Rulemaking proposed to amend paragraph (a) to read as follows: ''Evidence consists of testimony and exhibits, official records and publications filed under § 1.682, testimony from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent: * * *.'' One comment suggested that ''and discovery'' be changed to ''discovery'' in order to remove an unnecessary ''and.'' The suggestion is being adopted. Another comment suggested inserting ''and exhibits'' after ''testimony'' in the phrase ''testimony from another interference, proceeding, or action under § 1.683.'' The suggestion is being adopted, but with the term ''exhibits'' prefaced by ''referenced'' to make it clear that it relates only to exhibits referred to by a witness in an affidavit or during an oral deposition. Clarification is necessary because, as noted in the discussion of § 1.653(c)(5), *infra*, the term ''exhibit'' also includes official records and printed publications relied on under § 1.682, which are not referred to by a witness in an affidavit or during an oral deposition. For the same reason, ''referenced'' is also inserted before the first occurrence of ''exhibits'' in § 1.671(a). A similar clarifying amendment is also made to § 1.683(a).

The Notice of Proposed Rulemaking proposed to revise § 1.671(f) to state that ''[t]he significance of documentary and other exhibits identified by a witness in an affidavit or during oral deposition shall be discussed with particularity by *the* witness'' (emphasis added) in order to clarify that the requirement for the significance of documentary and other exhibits to be discussed with particularity by a witness applies only to documentary and other exhibits identified by a witness in an affidavit or during oral deposition. One comment indicated that proposed § 1.671(f) fails to recognize that a witness may be called merely to authenticate a piece of evidence, e.g., a photograph, which is to be discussed with particularity by another witness. The comment is well taken. Accordingly, § 1.671(f) is revised to read as follows: ''The significance of documentary and other exhibits identified by a witness in an affidavit or during oral deposition shall be discussed with particularity by *a* witness.'' Thus, § 1.671(f) does not apply to official records and printed publications submitted into evidence pursuant to § 1.682(a).

The Notice of Proposed Rulemaking proposed that § 1.671(g), which currently requires a party to file a motion (§ 1.635) to obtain permission prior to taking testimony or seeking documents or things ''under 35 U.S.C. 24,'' be revised to require a motion ''prior to compelling testimony or production of documents or things under 35 U.S.C. 24 or from a party.'' One comment suggested that the requirement to obtain permission from an administrative patent judge before noticing an employee of one's opponent as a hostile witness is important. Another comment took issue with the requirement and the statement in the Notice of Proposed Rulemaking that ''all depositions for a case-in-chief would have to be approved by an administrative patent judge'' (59 FR at 50191), stating:

> I suppose that means by motion with an explanation of what the deposition will cover. Such a procedure will destroy the ability to obtain effective testimony from an adverse witness, because of the need to reveal the strategy. Particularly in a derivation contest, the ability to obtain unrehearsed testimony of the adverse party will be lost, and he [sic; his testimony] may be the only corroboration available. Heretofore, taking the deposition of one's adverse party to obtain evidence for one's case-in-chief has been a matter of right on serving proper notice. It is essential that this right be preserved. Obviously, this procedure should not be used to discover a senior party's case-in-chief, and that limitation is easily protected by objection to any such questions that are not also related to the junior party's case-in-chief, and then either (a) calling the judge for an immediate ruling, or (b) refusing to answer the question.

Assuming for the sake of argument that the current interference rules permit a party to notice the deposition of an opponent's witness in order to take direct testimony of the type described above without first obtaining permission from an administrative patent judge, the interference rules do not provide any sanction for the failure of the witness to appear at a noticed deposition. Consequently, even under the current rules the party seeking the testimony of an opponent's witness, as a practical matter, must obtain an order from an administrative patent judge or the Board requiring the witness to appear so that the opponent can be sanctioned under § 1.616 if the witness fails to appear.

One comment suggested that the proposed new last sentence for § 1.671(g) (''The testimony of the witness shall be taken on oral

deposition.'') be omitted as superfluous in view of § 1.672(a) as amended. The suggestion is being adopted.

A comment suggested that § 1.671(g) be modified to expressly apply to an entity or witness under the opponent's control. The modification is not believed to be necessary. The term ''party'' is defined in § 1.601(1) to include an inventor's legal representative or assignee. The term ''opponent,'' while not defined per se in the rules, is a ''party'' who happens to be a ''second'' party opponent of a ''first'' party. Section 1.671(g) applies where a witness is under the control of a party opponent's assignee.

As proposed in the Notice of Proposed Rulemaking, a new paragraph (h) is added to § 1.671 providing that a party seeking to compel testimony or production of documents or things in a foreign country must file a motion (§ 1.635) to obtain permission from an administrative patent judge. The motion must show that the witness has been asked to testify in the United States and has refused to do so or that the individual or entity having possession, custody, or control of the document or thing has refused to produce the document or thing in the United States, even though the moving party has offered to pay the expenses involved in bringing the witness or the document or thing to the United States. When permission has been obtained from the administrative patent judge, the party, after also complying with the requirements for an oral conference (§ 1.673(g)), and service of documents and a proffer of access to things (§ 1.673(b)), must notice the deposition under § 1.673(a).

With respect to the requirements for a motion to compel testimony or production of documents or things in a foreign country, one comment suggested that the phrase ''possession, custody and control'' in proposed § 1.671(h)(2)(iii) appears to include a typographical error and should be changed to read ''possession, custody *or* control.'' The suggestion is being adopted.

Another comment suggested that the administrative patent judge would benefit from being additionally advised of (1) the foreign country where the witness, document or thing is located, (2) a summary of the procedures proposed to be followed to compel the testimony or production of documents or things in the foreign country, and (3) the time likely to be required to complete the procedures. In support, the comment notes that compelling testimony or production of documents in a foreign country can be so time-consuming that it may outweigh the benefit of allowing the testimony or documents to be obtained, considering their likely probative value and other relevant considerations. The comment continues that in order to allow the administrative patent judge to supervise the progress of the interference and to allow establishment of an appropriate schedule for the interference, the rules should require the suggested procedural information. These suggestions are being adopted. Adoption of these suggestions, however, should not be construed as a policy determination by PTO that it intends to approve of, or tolerate, unwarranted delays in obtaining testimony in a foreign country. The spirit of 35 U.S.C. 104 requires that evidence be obtainable in a foreign country essentially on the same basis that it is obtainable in the United States. When the laws and procedures in a foreign country make it so time-consuming to obtain evidence that the evidence is essentially not available in a reasonable manner, then the ''adverse inferences'' provision of new § 1.616(c) may be appropriately applied.

Another comment notes that proposed § 1.671(h)(1)(iv) for witnesses and § 1.671(h)(2)(iii) for documents and things assume that it will be possible to request the holder of the evidence to voluntarily produce it and obtain a definitive response to the request, whereas it is said that discovery experience in foreign countries shows that those possessing evidence often evade contact or, when contacted, evade giving a definitive response. Accordingly, the comment suggested that these provisions be reworded as follows:

> § 1.671(h)(1)(iv). Demonstrate that the party has made reasonable efforts to secure the agreement of the witness to testify in the United States but has been unsuccessful in obtaining the agreement, even though the party has offered to pay the expenses of the witness to travel to and testify in the United States.
>
> § 1.671(h)(2)(iii). Demonstrate that the party has made reasonable efforts to obtain the agreement of the individual or entity having possession, custody, or control of the document to produce the document or thing in the United States but has been unsuccessful in obtaining that agreement, even though the party has offered to pay the expenses of producing the document or thing in the United States.

The suggestion is being adopted. The expenses of a witness traveling to the United States means the round-trip travel expenses.

The Notice of Proposed Rulemaking proposed the addition to § 1.671 of a new paragraph (j), which is patterned on paragraph (e) of § 1.684 (removed and reserved). Section 1.671(j), as it was proposed, reads as follows:

> (j) The weight to be given testimony taken in a foreign country will be determined on a class-by-case basis. Little, if any, weight may be given to testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence (1) that giving false testimony in an interference proceeding is punishable as perjury under the laws of the foreign country where the testimony is taken and (2) that the punishment in a foreign country for giving such false testimony is similar to the punishment for perjury committed in the United States.

A number of comments were received in response to the proposal. Two comments questioned whether § 1.671(j) is intended to apply to affidavit testimony as well as deposition testimony. One comment suggested that the rule be expressly limited to deposition testimony, since testimony by affidavit (including declarations) can be taken in foreign countries under the perjury provisions of 28 U.S.C. 1746(1), and is additionally subject to the safeguard of cross-examination in the United States under proposed § 1.672(d). For these reasons, and also because current § 1.684(e), on which § 1.671(j) is patterned, applies only to deposition testimony in a foreign country in the form of interrogatories answered under oath, the suggestion to expressly limit § 1.671(j) to deposition testimony is being adopted.

Two comments stated that the party taking testimony in a foreign country should not have the burden of proving that the giving of false testimony is punishable as perjury under the law of the foreign country, as it may be difficult or impossible to prove or may not even be in dispute, and that the burden is especially unfair where a party is being forced to take testimony abroad by circumstances beyond its control. Both comments suggested putting the burden instead on the opponent to show that the requirements are not similar, such as by moving under § 1,635 to accord the testimony little weight or moving under § 1.656(h) to suppress the testimony altogether. Section 1.671(j), as proposed in the Notice of Proposed Rulemaking, does not alter who has the burden of proof with respect to testimony in a foreign country; the burden remains on the party offering the testimony, just as under current § 1.684(e).

Another comment questioned whether the first sentence of the rule as it was proposed, because it states that the weight of testimony ''will be determined on a case-by-case basis,''

might be construed as allowing the effect to be given testimony in a particular foreign country in a given interference to be decided without regard to the effect given in prior interferences to testimony given in that country. The comment stated that the rule as proposed might be contrary to the goals of equal treatment of similarly situated parties and predictability of outcome, which would best be served by a system in which the Board publishes decisions making findings as to the adequacy of testimonial procedures in particular foreign countries and then follows those decisions in subsequent cases, and suggested changing ''on a case-by-case basis'' to read ''in view of all the circumstances, including the laws of the foreign country governing the testimony.'' The suggestion is being adopted.

Another comment suggested that the ''clear and convincing evidence'' standard in the second sentence of proposed § 1.671(j) inappropriately implies that the determination of content of the law of a foreign country is a question of fact. PTO intends to treat the determination of the content of the law of a foreign country as a question of fact. Accordingly, the language ''as a matter of fact'' is inserted in § 1.671(j). The same comment further indicates that the proposed second sentence is troublesome because it (1) Requires a showing that giving false testimony is punishable as ''perjury'' under the laws of the foreign country rather than under some other name, (2) does not on its face allow the foreign offense to be applicable only when false testimony is given with the appropriate intent, and (3) requires that the foreign punishment be ''similar to'' United States punishment, when comparable or greater punishment would seem to serve the purpose of the proposed rule. The comment suggested that the foregoing problems can be avoided by replacing the proposed second sentence with the following sentence:

> Little, if any, weight may be given to oral testimony given in a foreign country unless it is demonstrated (1) that the giving of false testimony in the interference proceeding would be punishable under the laws of the foreign country where the testimony was taken under circumstances similar to those defined as perjury under the laws of the United States and (2) that the punishment in the foreign country for giving such false testimony is comparable to or greater than the punishment for perjury committed under the laws of the United States.

The comment additionally suggested adding a third sentence patterned on the second and third sentences of Fed. R. Civ. P. 44.1 and reading as follows: ''Such a demonstration may be made by any relevant material or source, including testimony, whether or not admissible under this subpart.'' To address the comments, which are believed to be well taken, the proposed second sentence is replaced with the following two sentences:

> Little, if any, weight may be given to deposition testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence, as a matter of fact, that knowingly giving false testimony in that country in connection with an interference proceeding in the United States Patent and Trademark Office is punishable under the laws of that country and that the punishment in that country for such false testimony is comparable to or greater than the punishment for perjury committed in the United States. The administrative patent judge and the Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.

The finally adopted language is also responsive to another comment requesting clarification of the term ''similar'' in order to assist practitioners, and possibly foreign governments in promulgating laws in harmony with 35 U.S.C. 104 and § 1.671.

In addition to the above amendments, § 1.671(a), which identifies the various types of testimony, is revised as proposed in the ''Miscellaneous Amendments'' part of the Notice of Proposed Rulemaking, by changing ''*evidence* from another interference, proceeding, or action filed under § 1.683'' to ''*testimony* from another interference, proceeding, or action filed under § 1.683'' in order to be consistent with the terminology of § 1.683. Sections 1.671 (c)(6) and (c)(7) are revised by changing ''by oral deposition or affidavit'' to ''by affidavit or oral deposition.''

Section 1.673 is also amended as proposed in the ''Miscellaneous Amendments'' part of the Notice of Proposed Rulemaking. Specifically, § 1.673(b) is revised by (1) changing the time for service of evidence to be relied on at an oral disposition from ''at least three days'' prior to the conference required by § 1.673(g) when service is by hand or by Express Mail to ''at least three working days'' prior to the conference, (2) changing the time for service by any other means from 10 days to 14 days prior to the conference and (3) removing the quotation marks around ''Express Mail.''

The second sentence of § 1.673(d) is removed, as proposed in the Notice of Proposed Rulemaking, as unnecessary, because all depositions for a case-in-chief require approval by an administrative patent judge.

Section 1.673(e) is revised, as proposed, by changing ''party electing to present testimony by affidavit'' to ''party who has presented testimony by affidavit.''

One comment suggested amending § 1.673(g) to state that a party, prior to serving a notice of deposition and after complying with paragraph (b) of § 1.673, shall contact the administrative patent judge, who shall then have an oral conference with the party and all opponents. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. In any event, it is expected that in most cases the parties will be able to agree on a time and place for depositions without the need for participation by an administrative patent judge.

Concerning the first sentence of § 1.673(a), one comment suggested deleting the term ''single'' from ''single notice of deposition'' on the ground that the current language might be construed to mean that a party must file only a single notice of deposition listing all depositions. The same suggestion was offered with respect to paragraph (e) of § 1.673. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

The Notice of Proposed Rulemaking proposed to amend § 1.616 by adding a new paragraph (c), patterned after 35 U.S.C. 104(b), stating that to the extent that any information under the control of an individual or entity located in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has been ordered to be produced by an administrative patent judge or the Board (§ 1.671(h)), but is not produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference. Section 1.616(c) further provides that this ''other action'' may include the imposition of appropriate sanctions under § 1.616(a).

One comment questioned whether the failure of an individual or entity located in a NAFTA country or a WTO member country to provide the information requested by a party can result in the imposition of sanctions against an opponent from that country even though the opponent is not at fault. The answer

is yes. One purpose of 35 U.S.C. 104 is to ensure that evidence for interferences is available in foreign countries in essentially the same manner that it is available in the United States. If the evidence is not available, then the appropriate inference provisions of 35 U.S.C. 104 shall be applied by PTO.

After the Notice of Proposed Rulemaking was published, it became apparent that the term ''ordered'' in the phrase ''to the extent that any information under the control of an individual or entity located in a NAFTA country or a WTO member country * * * has been ordered to be produced by an administrative patent judge or the Board'' may not be appropriate. Neither an administrative patent judge nor the Board can order testimony or production of documents and things in a foreign country from a witness who, or an entity that, is neither a party nor under the control of a party. Instead, an administrative patent judge or the Board can only authorize a party to seek to compel testimony or production in a foreign country from a witness or entity not under the control of a party. Accordingly, § 1.616(c) as adopted reads instead as follows:

(c) To the extent that an administrative patent judge or the Board has authorized a party to compel the taking of testimony or the production of documents or things from an individual or entity located in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to to proving or disproving a date of invention (§ 1.671(h)), but the testimony, documents or things have not been produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under paragraph (a) of this section.

As proposed in the Notice of Proposed Rulemaking, § 1.647, which currently requires a party who relies on a non-English language document to provide an English-language translation and an affidavit attesting to its accuracy, is revised to extend these requirements to any non-English language documents that a party is required to produce via discovery. One comment expressed the concern that the proposed amendment might impose an unnecessary financial burden on a non-U.S. party by requiring translations of compelled documents that are very long and have little or no relevance. The concern is believed to be misplaced. First, discovery in interferences, like discovery under the Federal Rules of Civil Procedure, is limited to evidence that is relevant. Second, as to relevant evidence, the scope of discovery under the interference rules is considerably narrower than the discovery available under the Federal Rules of Civil Procedure. Another comment stated that the general practice is that a party proffering a document is responsible for the cost of translation. The comment nevertheless suggested that in the case of documents offered to be produced during discovery, including cross-examination discovery pursuant to § 1.687(b), the documents be produced in the foreign language, with the recipient then indicating which documents it wishes to have translated and costs to be borne equally by the parties. The suggestion is not being adopted. In implementing practice under 35 U.S.C. 104, as amended, it is PTO's initial view that a correct policy is the one which the commentator says is the ''general practice.'' Whether a different policy might be appropriate at some future time is something that will be tested with experience.

II. Compensatory Attorney Fees and Expenses

Section 1.616, in addition to the amendments discussed above, also is revised by redesignating current paragraphs (a) through (e) as paragraphs (a)(1) through (a)(4) and (a)(6) and adding new paragraphs (a)(5) and (b).

Section 1.616(a)(5), as amended, authorizes the award of compensatory (as opposed to punitive) expenses and/or compensatory attorney fees as a sanction for failing to comply with the rules or an order. This sanction shall apply only to conduct occurring in an interference on or after the effective date of § 1.616 as amended. It is believed that there may be occasions when an award of compensatory expenses and/or compensatory attorney fees would be more commensurate in scope with the infraction than the sanctions that are currently authorized.

There are administrative decisions which seemingly hold that the tribunals of PTO do not have authority to award expenses and attorney fees. *See, e.g., Driscoll* v. *Cebalo,* 5 USPQ2d 1477, 1481 (Bd. Pat. Int. 1982) (the rules do not provide us with the jurisdiction to award expenses and we know of no authority which does), *aff'd in part, rev'd in part,* 731 F.2d 878, 221 USPQ 745 (Fed. Cir. 1984); *Clevenger* v. *Martin,* 1 USPQ2d 1793, 1797 (Bd. Pat. App. & Int. 1986) (we do not have authority under the rules to award attorney's fees); *MacMillan Bloedel, Ltd.* v. *Arrow-M Corp.,* 203 USPQ 952, 953 (TTAB 1979) (the TTAB is without authority to award expenses and attorney's fees); *Fisons, Ltd.* v. *Capability Brown, Ltd.,* 209 USPQ 167, 171 (TTAB 1980) (request for attorney's fees denied because good cause not shown and the TTAB has no authority to grant such requests); *Jonergin Co.* v. *Jonergin Vermont, Inc.,* 222 USPQ 337, 340–41 (Comm'r Pat. 1983) (TTAB did not err in refusing to award reasonable expenses and attorney's fees under 37 CFR 2.116(a), 2.120 and Fed. R. Civ. P. 37(a)(4)); *Anheuser-Busch, Inc.* v. *Major Mud & Chemical Co.,* 221 USPQ 1191, 1195 n.9 (TTAB 1984) (request for costs and attorneys fees was denied, inter alia, on the ground that the TTAB had no authority to award such fees and costs); *Luehrmann* v. *Kwik Kopy Corp.,* 2 USPQ2d 1303, 1305 n.4 (TTAB 1987) (the TTAB has no authority to grant monetary relief); *Fort Howard Paper Co.* v. *G.V. Gambina, Inc.,* 4 USPQ2d 1552, 1554 (TTAB 1987) (the TTAB has no authority to order costs or attorney's fees); *Paolo's Associates Ltd. Partnership* v. *Bodo,* 21 USPQ2d 1899, 1904 n.3 (Comm'r Pat. 1990) (the TTAB was correct in holding that 37 CFR 2.127(f) denies the TTAB authority to either award attorney's fees or costs to any party in a cancellation and opposition proceeding); *Nabisco Brands, Inc.* v. *Keebler Co.,* 28 USPQ2d 1237, 1238 (TTAB 1993) (the TTAB held, inter alia, that it did not have authority to award fees under 37 CFR 2.127(f)).

None of the decisions mentioned above provide any reasoned analysis or rationale to explain why the Commissioner lacks authority to promulgate a rule which would authorize imposition of monetary sanctions in appropriate cases. In view of the existence of the decisions, however, it is believed that a discussion of the Commissioner's authority to promulgate a rule authorizing the Board to award compensatory monetary sanctions is appropriate.

The Commissioner has been delegated the authority by the Congress to ''establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.'' 35 U.S.C. 6(a).

The U.S. Court of Appeals for the Federal Circuit upheld the authority of the Commissioner to issue regulations imposing sanctions in interference cases. In *Gerritsen* v. *Shirai,* 979 F.2d 1524, 24 USPQ2d 1912 (Fed. Cir. 1992), the Federal Circuit noted that 37 CFR 1.616 was a permissible exercise of the Commissioner's authority under 35 U.S.C. 6(a) and complied with the limitation on sanctions of the

Administrative Procedure Act. The court stated (979 F.2d at 1527 n.3, 24 USPQ2d at 1915 n.3):

> 35 U.S.C. § 6(a) (1988) permits the Commissioner of Patents and Trademarks to ''establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.'' Congress thus delegated plenary authority over PTO practice, including interference proceedings, to the Commissioner. On its face, 37 CFR § 1.616 represents a permissible exercise of that authority. Since the decision to impose a sanction * * * was authorized by law, it comports with the Administrative Procedure Act, 5 U.S.C. § 558(b) (1988).

In *Gerritsen*, the Federal Circuit held that the particular rule violation was sanctionable, but that the specific sanction chosen by the Board was too severe. Accordingly, the sanction was vacated and the case was remanded to the Board for imposition of a more appropriate sanction.

In *Abrutyn* v. *Giovanniello*, 15 F.3d 1048, 1050, 29 USPQ2d 1615, 1617 (Fed. Cir. 1994), the Federal Circuit again upheld the authority of the Board or an administrative patent judge to impose sanctions, including imposition of the most severe sanction, granting judgment against one of the parties:

> The Board or EIC [Examiner-in-Chief, now administrative patent judge] may impose an appropriate sanction, including granting judgment in an interference, against a party who fails to comply with the rules governing interferences, including filing deadlines. 37 CFR § 1.616 (1993).

Gerritsen and *Abrutyn* judicially establish that the Commissioner has authority under 35 U.S.C. 6(a) to promulgate regulations which impose a spectrum of sanctions, including imposition of the ultimate sanction of judgment or dismissal.

As a general matter, agencies are given broad authority in the selection of an appropriate sanction. The choice of sanction within agency statutory limits will be upheld unless it constitutes an abuse of discretion. *Butz* v. *Glover Livestock Comm'n Co.*, 411 U.S. 182 (1973); *Lawrence* v. *Commodity Futures Trading Comm'n*, 759 F.2d 767, 774 (9th Cir. 1985). Current § 1.616 authorizes an administrative patent judge or the Board to impose a spectrum of sanctions. The sanctions range from holding certain facts established for purposes of the interference (37 CFR § 1.616 (a)) to granting judgment against the party who violated a regulation or an order (37 CFR § 1.616(e)). As indicated above, the Federal Circuit has upheld the Commissioner's authority to promulgate § 1.616 and impose the specified sanctions (*Gerritsen*, 979 F.2d at 1527 n.3, 24 USPQ2d at 1915 n.3), including granting judgment against a party (*Abrutyn*, 15 F.3d at 1050, 29 USPQ2d at 1617). Judgment and dismissal are the most severe forms of sanction. *See National Hockey League* v. *Metropolitan Hockey Club*, 427 U.S. 639, 643 (1976); *Poulis* v. *State Farm Fire and Casualty Co.*, 747 F.2d 863, 867 (3d Cir. 1984); *Cine Forty-Second St. Theatre Corp* v. *Allied Artists Pictures Corp.*, 602 F.2d 1062, 1066 (2d Cir. 1979). Consistent with these cases, the Federal Circuit has held that a holding by the Board that a party is not entitled to a patent directed to certain claims is an extreme sanction. *Gerritsen*, 979 F.2d at 1532 n.12, 24 USPQ2d at 1919 n.12.

The imposition of monetary sanctions is manifestly a lesser sanction than judgment or dismissal. Indeed, reimbursement of expenses incurred as a result of inappropriate action by the opposing party has been held to be a mild form of sanction. *Cine Forty-Second St.*, 602 F.2d at 1066. More stringent sanctions include orders striking out portions of a pleading, orders prohibiting the introduction of evidence on a particular point, and orders deeming a disputed issue determined adversely to the position of a disobedient party. *Id.*

Since the imposition of a monetary sanction is a lesser sanction than judgment against a party, the inclusion of an ''appropriate'' monetary sanction in § 1.616, as adopted, is not outside the Commissioner's rulemaking authority and would not be inconsistent with the sanctions already present in § 1.616.

Whether a monetary sanction is appropriate depends on the purpose of the sanction. Civil sanctions may be categorized as penal and remedial. One is not to be subjected by an agency to a penal sanction unless the words of the statute plainly authorize imposition of a penal sanction. *Commissioner* v. *Acker*, 361 U.S. 87, 91 (1959). Thus, a statute must plainly authorize an agency's power to impose penalties. *Pender Peanut Corp.* v. *United States*, 20 Civil Court 447, 453–55 (1990). Agencies have no inherent authority, based solely on their enabling statute, to impose penal sanctions. That authority must be expressly given in the statute. *Pender Peanut Corp.*, 20 Cl. Ct. at 453–55 (1990); *Gold Kist, Inc.* v. *Department of Agriculture*, 741 F. 2d 344, 348 (11th Cir. 1984); Koch, *Administrative Law and Practice* § 6.81 (1985). A penal sanction has been defined as one which inflicts a punishment. *United States* v. *Frame*, 885 F.2d 1119, 1142 (3d Cir. 1989).

On the other hand, an explicit grant of power from Congress need not underpin each exercise of agency authority. *See Zola* v. *Interstate Commerce Commission*, 889 F.2d 508, 516 (3d Cir. 1989), *citing Amoskeag Co.* v. *Interstate Commerce Commission*, 590 F.2d 388, 392 (1st Cir. 1979). Where the enabling statute authorizes the agency to make such rules and regulations as may be necessary to carry out the provisions of an act—the regulation will be sustained so long as it is reasonably related to the purpose of the act. *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973). Under its enabling legislation, an agency has inherent power to impose administrative sanctions that are not ''penalties'' as long as the sanctions are reasonably related to the purpose of the enabling statute. *Gold Kist*, 741 F.2d at 348. Accordingly, in evaluating whether the imposition of a sanction is within an agency's inherent powers, it is necessary to determine whether the sanction is remedial or punitive. *Frame*, 885 F.2d at 1142. Remedial sanctions may be within the agency's inherent powers if reasonably related to the purpose of enabling legislation. A remedial sanction is one whose purpose is not to stigmatize or punish wrongdoers. *Frame*, 885 F.2d at 1143.

Thus, in the absence of express statutory authority, the Commissioner's authority to impose monetary sanctions is limited to sanctions which are remedial in nature rather than punitive. In addition, the sanctions must be reasonably related to the purpose of enabling statute under which PTO operates. Under these guidelines, the Commissioner would appear to be without authority to issue a regulation which permits a penal sanction to be imposed against a party or an attorney for violation of a rule or order. Fines payable to Government, including PTO, are manifestly intended to punish wrongdoing and are thus punitive in nature. Assessment to redress an injury to the public is in the nature of a penalty. *Republic Steel Corp. v. National Labor Relations Board*, 311 U.S. 7, 12–13 (1940). On the other hand, the imposition of costs or expenses, including attorneys' fees, incurred by an opposing party due to the violation of a rule or order, may properly be considered remedial. Imposing costs or attorneys' fees serves to defray the expenses actually incurred by the opposing party for the violation of a rule or order by an opponent. *See Poulis*, 747 F.2d at 869 (non-dilatory party will not have to bear the brunt of the attorney's delay). Monetary sanctions would enhance the Board's ability to protect the integrity of its proceedings. *See Zola*, 889 F.2d at 516 (ICC justified in

imposing monetary sanctions in acting to protect the integrity of its jurisdiction). Monetary sanctions would also allow the Board to maintain control of its docket to maximize the use of limited resources. *See Griffin & Dickson v. United States*, 16 Cl. Ct. 347, 351 (1989) (case management responsibilities require broad inherent authority to impose [non-penal] sanctions). Imposition of monetary sanctions is the only sanction both mild enough and flexible enough to use in day-to-day enforcement of orderly and expeditious litigation. *Eash v. Riggins Trucking, Inc.*, 757 F.2d 557, 567, (3d Cir. 1985) (in banc). Thus, monetary sanctions are reasonably related to the Commissioner's plenary authority to promulgate regulations for the conduct of proceedings, including interference proceedings in PTO.

Section 1.616(b), as proposed to be amended, would have authorized the imposition of a sanction, including a sanction in the form of compensatory expenses and/or attorney fees, against a party for taking or maintaining a frivolous position. A number of comments were received opposing the authorization of sanctions for taking or maintaining frivolous positions (§ 1.616(b)). Several comments suggested that the question of what is ''frivolous'' is inherently highly subjective and will therefore be frequently raised, substantially increasing costs and delaying decisions on more substantive issues. PTO believes, however, consistent with other comments received during the comment period, that inasmuch as a groundless motion for sanctions would itself be grounds for sanctioning the movant for taking or maintaining a frivolous positions, it is expected that motions for sanctions will only be filed in clear cases. One comment suggested that § 1.616(b) be reworded to parallel Rule 11 of the Federal Rules of Civil Procedure so that sanctions would only be imposed upon motion by an opponent, subject to a twenty-one day ''safe harbor'' withdrawal provision, and would explicitly apply only to frivolous positions taken in writing. Another comment, while supportive of the proposed amendment on the ground that it should reduce the number of frivolous papers, cautioned against treating as frivolous ''that which is simply born of ignorance.'' The suggestion to have § 1.616(b) authorize sanctions imposed only on motion by a party is not being adopted. There may be situations in which the Board believes it would be appropriate to award compensatory fees or expenses even in the absence of a motion by a party. The suggestion that Fed. R. Civ. P. 11 permits sanctions only upon motion is believed to be incorrect; for example, Fed. R. Civ. P. 11(c)(1)(b) authorizes sanctions on the court's initiative. The suggestion to use the ''safe harbor'' approach of Fed. R. Civ. P. 11(c)(1)(A), which provides that a motion for sanctions shall be served but not filed unless, within 21 days after service of the motion, the challenged position is not withdrawn or appropriately corrected, is not being adopted. The administrative patent judge and the Board should know the reason why a party has withdrawn or corrected a position. Nevertheless, in order to make it clear that sanctions will not be imposed for mistakenly taking an erroneous position that is withdrawn or corrected as soon as the error becomes apparent, the proposed phrase ''for taking *or* maintaining a frivolous position'' in changed to ''for taking *and* maintaining a frivolous position.''

The suggestion that § 1.616(b) sanctions be limited to frivolous positions taken in writing is based on the Advisory Committee Note on the 1993 amendments to Fed. R. Civ. P. 11. The Note states in pertinent part: ''The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been made if there had been more time for study and reflection.'' For the reason given in the Advisory Committee Note, the suggestion is being adopted. Accordingly, § 1.616(b) as adopted is limited to a frivolous position taken and maintained in papers filed in the interference and shall apply only to frivolous positions taken and maintained after the effective date of § 1.616 as amended.

Other comments questioned how the Board intends to handle proof of amounts of compensatory expenses and/or attorney fees and expressed the hope that attorney fee awards will not be *de facto* discriminatory as between highly paid outside counsel and in-house counsel without fees or billing records. The matter of how to prove amounts of compensatory expenses and/or attorney fees will be handled on a case-by-case basis.

Another comment suggested that an administrative patent judge or the Board be required to issue an order to show cause prior to imposing a sanction, since a party may be able to explain why a sanction should not be imposed. The suggestion is presumably based on Fed. R. Civ. P. 11(c)(1)(B) and directed to cases in which an administrative patent judge or the Board on its own initiative determines that a sanction is appropriate. The suggestion is being adopted and implemented in a new paragraph, § 1.616(d). In addition, paragraph (d) expressly provides that a party may file a motion (§ 1.635) requesting the imposition of sanctions, the drawing of adverse inferences or other action under paragraph (a), (b) or (c) of § 1.616.

III. Certificates of Prior Consultation

Section 1.637(b) currently requires that a miscellaneous motion under § 1.635 contain a certificate stating that the moving party has conferred with all opponents in a good faith effort to resolve by agreement the issues raised by the motion and indicating whether any other party plans to oppose the motion. In the Notice of Proposed Rulemaking, it was proposed to amend paragraph (b) to extend the requirement for such a certificate to preliminary motions filed under § 1.633 and other motions filed under § 1.634. It also was proposed to require the certificate to indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, to identify the issues and/or facts believed to be in dispute.

The rationale offered in the Notice of Proposed Rulemaking for the amendment was an expectation that consultation would result in a reduction in the number of issues raised by motions under §§ 1.633–34, as well as a reduction in the number of motions filed under those rules. All but one of many comments received in response to the proposal urged that the proposed rule not be adopted. In support, it was said that the proposed rule would unnecessarily increase the time and costs required to file motions under §§ 1.633–34, particularly preliminary motions. PTO, upon reflection, agrees with the comments. Accordingly, the proposal to extend the consultation requirement of § 1.637(b) to §§ 1.633–34 motions is withdrawn. The withdrawal of the proposed rule, however, should not be interpreted as precluding an administrative patent judge from holding a conference call prior to the date preliminary motions are due for the purpose of discussing which preliminary motions the parties plan to file or from entering an order requiring prior consultation as to a particular motion.

Several comments, citing experience with the consultation requirement for § 1.635 motions, suggested that

§ 1.637(b) be dropped altogether, or be limited at most to motions requesting extensions of time. The suggestion is not being adopted. However, there are circumstances where it may be appropriate to suspend the requirements of § 1.637(b). An example is a multi-party interference where one party may need to consult with a large number of opponents. Another example is a motion filed after a hearing before an administrative patent judge, where filing of the motion was authorized at the hearing. Accordingly, while the suggestion to delete the requirement for consultation altogether is not being adopted, the language ''Unless otherwise ordered by an administrative patent judge or the Board'' is added at the beginning of the first sentence of § 1.637(b).

Several comments were received which were also critical of the proposal to amend § 1.637(b), even if applied only to § 1.635 motions, to require that the certificate ''indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, identify the issues and/or facts believed to be in dispute.'' One comment suggested that the proposal is unworkably vague with respect to: (1) the form of the information a party must provide to the opponent (e.g., a draft motion, an outline of the motion, a verbal statement of the motion, the evidence in support of the motion); (2) what form the opponent must use to provide its reasons for opposing (i.e., written or oral); and (3) whether the moving party can change the arguments in the motion in response to the reasons given by the opposing party without the need for another consultation. Other comments noted that an opponent may not have sufficient time before the due date for motions in which to take a reasoned position on the motion. Another comment observed that it is very difficult for the movant to identify the issues or facts believed to be in dispute, unless it is a very cursory exercise. According to the comment, the party cannot know what the opponent is really thinking, and suggested instead that there be an in-person conference involving the parties and the administrative patent judge in order to discuss all intended (or filed) motions. The comments are believed to be well taken and the proposal in the Notice of Proposed Rulemaking to amend § 1.637(b) to require that the motion, ''if an opponent has indicated that it will oppose the motion, identify the issues and/or facts believed to be in dispute'' is withdrawn.

IV. Service of a ''Developing Record''

In addition to the amendments to § 1.672 discussed above under the heading ''Amendments responsive to adoption of Public Laws 103–182 and 103–465,'' §§ 1.672, 1.682, 1.683 and 1.688 are amended, as proposed (with a few minor modifications discussed *infra*), to require each party to serve on each opponent a ''developing record'' that will evolve into the record required to be filed under § 1.653.

As noted above, the Notice of Proposed Rulemaking proposed to amend paragraph (b) of § 1.672 to provide that a party presenting testimony of a witness by affidavit shall, no later than the time set by the administrative patent judge for serving affidavits, file (and serve) the affidavit, whether it is a new affidavit or an affidavit previously filed by that party during ex parte prosecution of an application or under § 1.608 or 1.639(b). Furthermore, in view of the proposed amendment to § 1.672(b), it was also proposed to remove and reserve, as superfluous, § 1.671(e), which requires a party to give notice of intent to rely on an affidavit filed by that party during ex parte prosecution of an application or an affidavit under § 1.608 or 1.639(b). An oral comment suggested that § 1.671(e) notice practice be retained with respect to § 1.639(b) affidavits, so that a party does not have to refile (and re-serve) a previously submitted § 1.639(b) affidavit on which it intends to rely at final hearing. The comment further suggested that for the same reason § 1.671(e) notice practice should be extended to patents and printed publications filed and served pursuant to § 1.639(b). The suggestions are being adopted. Section 1.671(e) thus revised reads as follows:

> (e) A party may not rely on an affidavit (including any exhibits), patent or printed publication previously submitted by the party under § 1.639(b) unless a copy of the affidavit, patent or printed publication has been served and a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit, patent or printed publication. When proper notice is given under this paragraph, the affidavit, patent or printed publication shall be deemed as filed under § 1.640(b), 1.640(e)(3), 1.672(b) or 1.682(a), as appropriate.

Furthermore, in order to ensure that the evidence submitted under § 1.639(b) includes sequential numbering of the type required of other evidence filed under § 1.672(b), § 1.639(b) is revised to require the use of sequential numbering, which, for the reasons discussed *infra*, is required to be used only to the extent possible.

As explained *supra*, in view of the retention of § 1.671(e) in amended form, § 1.672(b), as adopted, permits a party to file an affidavit or, if appropriate, a notice under § 1.671(e).

Sections 1.682, 1.683 and 1.688 are revised, substantially as proposed, to parallel the amendments to § 1.672. Section 1.682(a) as proposed to be amended provides that a party may introduce into evidence, if otherwise admissible, an official record or printed publication not identified in an affidavit or on the record during on oral deposition of a witness, by filing (and serving) a copy of the official record or publication no later than the time set for filing affidavits under § 1.672(b), thereby eliminating the current requirement for filing a notice of intent to rely on the official record or printed publication. In view of the retention of § 1.671(e) in amended form to permit a party to file a notice of intent to rely on patents and publications previously filed by the party under § 1.639(b), § 1.682(a), as adopted, permits a party to file a copy of an official record or printed publication or, if appropriate, a notice under § 1.671(e). Section 1.683(a) is amended, as proposed, to provide that a party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition from another interference, proceeding, or action involving the same parties by filing (and serving) a copy of the affidavit or a copy of the deposition transcript no later than the time set for filing affidavits under § 1.672(b), thereby eliminating the current requirement for a party for filing a motion under § 1.635 for leave to rely on such testimony. Section 1.688(a) is amended, as proposed, to provide that, if otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer no later than the time set for filing affidavits under § 1.672(b). Thus, all evidence filed under §§ 1.672, 1.682, 1.683 and 1.688 that relates to a party's case-in-chief should be filed (and served) or noticed under § 1.671(e) no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief and all evidence under those sections that relates to the party's rebuttal should be filed (and served) or noticed under § 1.671(e) no later than the date set for the party to serve

affidavits under § 1.672(b) for its case-in-rebuttal.

The Notice of Proposed Rulemaking proposed that the pages of all affidavits and deposition transcripts that a party enters into evidence pursuant to §§ 1.672, 1.682, 1.683 and 1.688 shall include sequential page numbers, which shall also serve as the record page numbers for the affidavits and deposition transcripts in the party's record when it is filed under § 1.653. Likewise, the Notice of Proposed Rulemaking proposed that exhibits identified in the affidavits and deposition transcripts and any official records and printed publications served under § 1.682(a) shall be given sequential numbers, which shall serve as the exhibit numbers when the exhibits are filed under § 1.653(i) with the party's record. The major benefit of sequential page numbering is that a particular page of an affidavit or exhibit will be referred to in a consistent manner throughout the record. Thus, when an affiant is subject to cross-examination about the affiant's affidavit or another person's affidavit, the record will be clear as to the material which is the subject of the cross-examination. Correlation of pages of affidavits and/or exhibits will no longer be necessary.

Regarding the sequential numbering of affidavits, one comment noted that:

> While this might be of some minor convenience to the PTO, it is inconvenient for the public, and may be difficult to be accomplished in practice. Due to severe PTO time constraints in preparing affidavits, it is usually essential to amend, add to, rewrite and execute declarations and affidavits in parallel. Often, the declarants are in different physical locations. Modern offices do not have the old fashioned manual impact typewriters that would be required to superpose new page numbers on executed documents. Declarations are already clearly identifiable, by the name of the declarant and the page of his or her declaration. * * *

The comment apparently assumes, incorrectly, that the required sequential numbers are to be used in lieu of the usual page numbers that appear in affidavits and deposition transcripts. The sequential numbers are in addition to the usual page numbers and are typically added to the pages by a sequential numbering device (e.g., a ''Bates'' stamp).

Since a party may decide not to rely at final hearing on a previously filed § 1.639(b) affidavit (including any exhibits), or on patents and printed publications that it previously filed under § 1.639(b) in connection with a motion, there may be gaps in the sequential numbers of the affidavit pages and exhibits that are relied on at final hearing. *Compare, e.g.,* Federal Circuit Rule 30(c)(2) with respect to pages omitted from an appendix. Furthermore, due to circumstances beyond the party's control it may not be possible to submit the § 1.639(b) affidavits and accompanying exhibits into evidence in the proper order. Finally, the exhibits referred to in testimony under § 1.683 from another proceeding will obviously already have the exhibit numbers assigned to them in that proceeding. When possible, those planning to use exhibits and testimony from a previous interference may wish to avoid using an exhibit number used in the previous interference, thereby minimizing the possibility of confusion which can exist when two exhibits in the same record have the same exhibit number. For these reasons, the proposal to amend § 1.672 to require that testimony pages and exhibits ''shall be given sequential numbers'' is changed to a requirement that testimony and exhibits ''shall be given sequential numbers to the extent possible.'' This change also applies to evidence submitted under §§ 1.682, 1.683 and 1.688 as amended, which state that the pages of affidavits and deposition transcripts served under those paragraphs and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b). In order to take into account that there may be gaps in page numbers in the record and in the exhibit numbers, § 1.653(d) is revised to state that the pages of the record shall be consecutively numbered ''to the extent possible.'' Sections 1.677 (a) and (b) are revised in a similar manner. That is, paragraph (a) is revised to limit its requirement for consecutive page numbering, which the rule currently applies to ''the entire record of each party,'' to the pages of each transcript. Paragraph (b) is revised to require that exhibits be numbered consecutively ''to the extent possible.''

Section 1.672(a) affidavits and § 1.683(a) testimony shall be accompanied by an index giving the name of each witness and the number of the page where the testimony of each witness begins. The exhibits shall be accompanied by an index briefly describing the nature of each exhibit and giving the number of the page of affidavit or § 1.683(a) testimony where each exhibit identified in an affidavit or during an oral deposition is first identified and offered into evidence.

An opponent who objects to the admissibility of any evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) and 1.688(a) must file objections under §§ 1.672(c), 1.682(c), 1.683(b) and 1.688(b) no later than the date set by the administrative patent judge for filing objections to affidavits under § 1.672(c). An opponent who fails to challenge the admissibility of the evidence on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) will not be permitted to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection to evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) or 1.688(a), the party may respond by filing one or more supplemental affidavits and, in the case of objections to evidence filed under §§ 1.672(b), 1.682(b) and 1.683(a), may also file supplemental official records or printed publications. No objection to the admissibility of supplemental evidence shall be made except as provided by § 1.656(h). A party submitting evidence in response to an objection is aware of the objection and should take whatever steps are necessary in presenting supplemental evidence to overcome the objection. Whether the steps were sufficient is determined at final hearing on the basis of a motion to suppress the evidence under § 1.656(h).

The pages of the supplemental affidavits shall be sequentially numbered beginning with the number following the last page number of the testimony served under §§ 1.672(b), 1.683(a) and 1.688(a), if possible. Likewise, any additional exhibits identified in the supplemental affidavits and any supplemental official records and printed publications shall be given sequential numbers beginning with the number following the last number of the previously identified exhibits, if possible. After the time expires for filing objections and supplemental affidavits, or earlier when appropriate, the administrative patent judge shall set a time within which any opponent may file a request to cross-examine an affiant on oral deposition.

If any opponent requests cross-examination of an affiant, the party shall notice a deposition at a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination. Ordinarily, the parties should be able to agree on a ''reasonable'' place within the United States. Whether a place is a reasonable place depends on the circumstances. Generally a reasonable place within the United States would be the place where a witness resides or the office of one of the counsel of record in the interference. In assessing the reasonableness of a place, the convenience of both parties should be considered. For example, in a two-party interference if an affiant normally resides in Ohio and counsel

are located respectively in Illinois and New York, noticing a deposition for Arizona may not be reasonable. In the event agreement cannot be reached, a place will be set by the administrative patent judge for taking the deposition.

Any redirect and recross shall take place at the deposition.

Within 45 days of the close of the period for taking cross-examination (§ 1.678 is revised to change the time for filing certified transcripts from 45 days to one month), the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by a witness during a deposition. The pages of the transcripts served under this paragraph and the accompanying exhibits shall be sequentially numbered in the manner discussed above. The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b). At this point in time, the opponent will have been served with all of the testimony that will appear in the party's record (with the same page numbers) as well as all of the documentary exhibits that will accompany the record (with the same exhibit numbers).

In the first sentence of § 1.688(a), the comma proposed to be inserted after ''evidence'' is inserted instead after ''admissible.''

V. Miscellaneous Amendments

Although not proposed in the Notice of Proposed Rulemaking, the authority citation for 37 CFR part 1 is revised by changing it from ''35 U.S.C. 6'' to ''35 U.S.C. 6 and 23.''

Throughout the rules, the term ''examiner-in-chief'' is replaced by ''administrative patent judge'' to reflect the change in the title of the members of the Board. *See* Commissioner's Notice of October 15, 1993, ''New Title for Examiners-in-Chief,'' 1156 Off. Gaz. Pat. Office 332 (Nov. 9, 1993). One comment correctly noted that the Notice of Proposed Rulemaking failed to apply the change to § 1.610(b). The omission has been corrected. Another comment, citing possible confusion over the meaning of the term ''administrative patent judge,'' suggested adding one of the following provisions to § 1.601 to define ''administrative patent judge'' in either of the following ways:

An administrative patent judge is a member of the Board of Patent Appeals and Interferences, or

An administrative patent judge is an examiner-in-chief (35 U.S.C. 7) or the Commissioner, the Deputy Commissioner or, an Assistant Commissioner when acting as a member of the Board of Patent Appeals and Interferences.

Neither suggestion is being adopted. The members of the Board of Patent Appeals and Interferences are the Commissioner [Assistant Secretary and Commissioner of Patents and Trademarks], the Deputy Commissioner [Deputy Assistant Secretary and Deputy Commissioner of Patents and Trademarks] and the Assistant Commissioners [the Assistant Commissioner for Patents and the Assistant Commissioner for Trademarks], and the examiners-in-chief, now administrative patent judges, including the Chief Administrative Patent Judge and the Vice-Chief Administrative Patent Judge, 35 U.S.C. 7(a). While the rules talk in terms of administrative patent judge, it must be recognized that any member of the Board, including a Commissioner-member, may take action in an interference which can be taken by an administrative patent judge.

Section 1.11(e) is revised to allow access to the file of an interference involving a reissue application once the interference has terminated or an award of priority or judgment has been entered as to all counts. Although it was intended that the public have access to any interference that involves a case which is open to the public, and § 1.11(b) provides that a reissue application is open to the public, interferences involving reissue applications were inadvertently not included in current § 1.11(e).

Section 1.192(a), which specifies the contents of the brief of an appellant for final hearing in an ex parte appeal, is revised to state that arguments or authorities not included in the brief will be refused consideration by the Board unless good cause is shown. The rule previously stated that such arguments and authorities may be refused consideration by the Board, without specifying how the Board decides whether or not it should be considered. One comment suggested that the amendment, if adopted, would make PTO less ''user friendly'' and would increase the burden of mere technicalities on applicants. It is believed that the comment misapprehends the nature of the proposed change, inasmuch as the change would merely codify the ''good cause'' standard that is currently applied by the Board in determining whether a new argument or authority will be considered.

Section 1.192(c) is revised in several respects. A first amendment simplifies the language used in the rule to refer to a brief filed by an applicant who is not represented by a registered practitioner. A second amendment removes from paragraph (c) the requirement that such a brief be in substantial compliance with the requirements of paragraphs (c)(1), (2), (6) and (7). Experience has shown that it is better to evaluate pro se briefs on a case-by-case basis. Section 1.192(c) is also revised to redesignate current paragraphs (c)(1) through (c)(7) as paragraphs (c)(3) through (c)(9), and to add new paragraphs (c)(1) and (c)(2). The added paragraphs (c)(1) and (c)(2) require an appellant who has filed an appeal to the Board to identify the real party in interest and any related appeals and interferences. It is necessary to know the identity of the real party in interest so that members of the Board can comply with applicable ethics regulations associated with working on matters in which the member has an interest. The requirements to identify related appeals and interferences is derived in part from Federal Circuit Rule 47.5 and will minimize the chance that the Board will enter inconsistent decisions in related cases.

One comment suggested that the term ''real party in interest'' be replaced by ''owner'' in order to avoid confusion with the term ''party in interest of record,'' which appears in PTO's Notice of Allowance and Issue Fee Due (PTO–850). The suggestion is not being adopted, since it appears unlikely that any confusion will occur.

A comment on behalf of a large U.S. corporation having extensive overseas operations noted that the proposed requirement to identify the real party in interest will impose a substantial burden in appeals to the Board where the real party in interest is a corporation with international operations and many diverse and frequently changing affiliates. The comment was accompanied by a copy of a ''Certificate of Interest'' previously filed by the corporation in an appeal to the Federal Circuit, which named some three hundred subsidiaries and affiliates in which the corporation had an ownership interest of five percent or more. According to the comment, if ownership interests of less than five percent had been included, the list would have been about twice as long. The comment explained that because the corporation's business interests worldwide are frequently changing, the list would require updating for each and every appeal brief, and questioned whether this burden is justified. Upon consideration of the comment, it is

believed, at this particular time, that the proposed rule would be burdensome on the public. Whether in the future more information might be required to the nature of a real party in interest is a matter which can await experience under a rule which requires identification only of the real party in interest. Accordingly, the suggestion is being adopted to the extent of requiring appellants to the Board to identify only the real party in interest. In this respect, § 1.192(c)(1) will parallel an equivalent requirement for briefs in inter partes cases. See § 1.656(b)(1)(ii), as amended.

One comment suggested revising proposed § 1.192(c)(9), which calls for an appendix including the claims on appeal, to include a statement that the rule sets forth the minimum requirements for a brief. According to the comment, the statement would make it clear that § 1.192 does not prohibit inclusion of other materials which an appellant may consider necessary or desirable, a point which the comment noted is explained in the Manual of Patent Examining Procedure § 1206, at 1200–6. The suggestion is not being adopted, since it is believed to be apparent from the rule that the requirements set forth therein are the minimum requirements.

Section 1.192 as proposed to be amended in the Notice of Proposed Rulemaking includes an amendment to current paragraph (a)(5) (''Grouping of claims''), proposed to be redesignated as paragraph (a)(7), that inadvertently was not discussed in the commentary in the Notice of Proposed Rulemaking. Specifically, it was proposed to amend that paragraph to state that for each ground of rejection which an appellant contests and which applies to more than one claim, the rejected claims shall stand or fall together with the broadest claim, and that only the broadest claim would be considered by the Board of Patent Appeals and Interferences unless a statement is included that the rejected claims do not stand or fall together and, in the argument under paragraph (c)(8), appellant presents reasons as to why appellant considers the rejected claims to be separately patentable from the broadest claim; merely pointing out what a claim covers is not an argument as to why the claim is separately patentable from the broadest claim. One comment suggested that it is not always clear which is the broadest claim, such as where there are two broad independent claims of differing scope (e.g., claims to ABCDE and ABCDF). The comment suggested that simply saying that the claims stand or fall together, as the current rule does, is probably the best one can do on a generic basis. The points raised by the comment are partly well taken. Paragraph (c)(7), as adopted, therefore reads as follows:

Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Where there is a ''broadest'' claim, that claim will normally be selected. Where there are two broad claims, such as ABCDE and ABCDF, as mentioned in the comment, the panel assigned to the case will select which claim to consider. The same would be true in a case where there are both broad method and apparatus claims. The rationale behind the rule, as amended, is to make the appeal process as efficient as possible. Thus, while the Board will consider each separately argued claim, the work of the Board can be done in a more efficient manner by selecting a single claim when the appellant does not meet the conditions of paragraph (c)(7) of § 1.192, as adopted. The choice of whether each claim will be considered separately or whether all claims will be considered on the basis of a single claim is a choice to be made by the appellant.

The term ''subparagraph,'' which appeared in §§ 1.192 (c)(7) and (c)(8) in their originally proposed form, has been replaced by ''paragraph'' in those sections as amended.

Section 1.601 in general defines a number of terms used throughout the interference rules. One comment noted that a consistent format is not used throughout the definitions. For example, in § 1.601(q) all defined terms are italicized and in § 1.601(n) the defined terms are in quotation marks. The comment is well taken that there should be uniformity. Accordingly, paragraphs (l), (m) and (n) are revised by italicizing the first occurrence of each of the following defined terms: ''junior party'', ''same patentable invention'' and ''separate patentable invention.''

The Notice of Proposed Rulemaking proposed amending paragraph (f) of § 1.601 in a number of respects, including adding the following sentence: ''A count should be broad enough to encompass the broadest corresponding patentable claim of each of the parties.'' One comment questioned whether the requirement is to be applied only at the time the interference is declared or throughout the interference. The comment notes that after an interference is declared, prior art may come to light which renders unpatentable all of the parties' claims that correspond to the count. The comment suggests that under these circumstances, requiring a count to be patentable over the prior art could mean that there might not be a proper count. According to the comment, a result might be that the Board, whose authority to enter judgments under the rules is limited to claims that correspond to a count (§§ 1.658 and 1.659), would be unable to enter judgment against the claims on the ground of unpatentability. Furthermore, since the Notice of Proposed Rulemaking was published, it has become apparent that § 1.601(f) could also be clarified in two other respects. First, the count should be broad enough to encompass *all* of the patentable claims that are designated as corresponding to the count, as opposed to solely each party's broadest corresponding patentable claim, i.e., where a party claims ABCDE in one claim and ABCDF in another claim and both claims are designated to correspond to the count. The current language of the rule can be argued to overlook the situation where a party has specific claims but no generic claim. Second, it should be made clear that the term ''patentable'' as used in § 1.601(f) in describing the scope of the count means patentable in view of the prior art, as opposed to unpatentability based on non-prior art grounds, e.g., the written description requirement of 35 U.S.C. 112, first paragraph. Accordingly, in lieu of the sentence proposed in the Notice of Proposed Rulemaking, § 1.601(f) is revised to include the following sentence: ''At the time the interference is initially declared, a count should be broad enough to encompass all of the claims that are patentable over the prior art and designated to correspond to the count.'' A similar change is made in §§ 1.603 and 1.606. That is, instead of revising these rules to require that each application ''must contain, or be amended to contain, at least one *patentable* claim that corresponds to the count,'' as proposed in the Notice of Proposed Rulemaking, these rules as amended require that each application ''must contain, or be amended to contain, at least one claim that is *patentable over the prior art* and corresponds to the count.''

The Notice of Proposed Rulemaking also proposed adding to § 1.601(f) a

sentence stating: ''A count may not be so broad as to be unpatentable over the prior art.'' Several comments questioned the meaning of the proposed sentence on the ground that a count, unlike a claim, does not have an effective filing date for purposes of establishing what is available against it as prior art. In view of the comments, the proposal to add the sentence is hereby withdrawn.

The Notice of Proposed Rulemaking proposed to amend the second sentence of § 1.601(f) by changing ''which corresponds'' to read ''that is designated to correspond.'' This proposal should have referred instead to the third sentence, which is revised in the manner proposed. It was also proposed to revise the fourth and fifth sentences to read as follows, except that, for the reasons given above, the terms ''correspond exactly'' and ''correspond substantially'' are italicized rather than set off by quotation marks:

> A claim of a patent or application which is designated to correspond to a count that is identical to a count is said to *correspond exactly* to the count. A claim of a patent or application designated to correspond to a count that is not identical to a count is said to *correspond substantially* to the count.

On oral comment suggested that these sentences could be made clearer by revising them to read as follows:

> A claim of a patent or application that is designated to correspond to a count and is identical to the count is said to *correspond exactly* to the count. A claim of a patent or application that is designated to correspond to a count but is not identical to the count is said to *correspond substantially* to the count.

This suggestion is being adopted.

As proposed in the Notice of Proposed Rulemaking, the fifth sentence of § 1.601(f) is revised by removing the phrase ''but which defines the same patentable invention as the count,'' which is used to describe a claim that corresponds to the count but is not identical to the count. The phrase is superfluous because a claim that corresponds to the count by definition is directed to the same patentable invention as the count.

The Notice of Proposed Rulemaking proposed to revise the last sentence of § 1.601(f) to state that: ''A phantom count is unpatentable to all parties under the written description requirement of the first paragraph of 35 U.S.C. 112.'' One comment said that the sentence as proposed to be revised is inaccurate supposedly because a phantom count is not necessarily unpatentable to all parties for lacking written description support. According to the comment, a party may have written description support for a new claim identical to the count, yet choose not to present such a claim during the interference for tactical reasons, such as the desire to keep the count narrow enough to prevent an opponent from presenting priority evidence it might be able to produce with respect to a broader count. Another comment suggested that a phantom count be defined as a count that is ''broader than the disclosure of any party to the interference.'' A third comment suggested that patentability under the enablement and best mode requirements be addressed along with patentability under the written description requirement. Apart from the comments, since patentability affects claims rather than counts, the proposal to amend the last sentence of § 1.601(f) is hereby withdrawn and the last sentence in its current form is removed.

One comment suggested counts serve little, if any, purpose under the new rules. The comment states that if PTO nevertheless feels compelled by tradition to have counts, each count should be the alternative union of *all* the parties' claims that are designated to correspond to the same invention. The suggestion that counts be abolished altogether, while superficially appearing to have considerable merit, is believed to be outside the scope of the present rulemaking and, for that reason, is not being adopted at this time. The suggestion that a count be the alternative union of all of the parties' claims that define the same patentable invention would not appear to require any change in the rules. The formulation of the count, whether by reference to particular claims in the parties' applications/patents or by describing the subject matter of the interference, is a matter within the discretion of PTO at this time.

The Notice of Proposed Rulemaking proposed amending § 1.601(g). Specifically, it was proposed to define the effective filing date of an application as the filing date of an earlier application accorded to the application or patent under 35 U.S.C. 119, 120, 121 or 365, or, if no benefit is accorded, the filing date of the application, and to define the effective filing date of a patent as the filing date of an earlier application accorded to the patent under 35 U.S.C. 120, 121, or 365(c) or, if no benefit is accorded, the filing date of the application which matured into the patent. The purpose of including the reference to 35 U.S.C. 121 is to eliminate any doubt that a divisional application may be entitled to an earlier filing date in accordance with 35 U.S.C. 121.

One comment suggested that the definition of effective filing date in § 1.601(g) should be expressly keyed to the claims rather than to the applications and patents, since different claims in the same application or patent may have different effective filing dates. The comment also suggested that the rules should be revised to make it clear that a motion under § 1.633(h) to add a reissue application need not be accompanied by a motion under § 1.633(f) for benefit of the patent sought to be reissued. Another comment suggested that the rule be revised to state that the effective filing date referred to in § 1.601(g) is the effective filing date of an application which constitutes a constructive reduction to practice of the subject matter of the count so as to make it clear that the rule is not referring to the effective filing date of an involved claim. These comments demonstrate that there is considerable uncertainty with respect to the inter-relationship between benefit issues and priority proof issues, including, among other issues, (a) benefit for a claim, (b) benefit for a count, (c) constructive reductions to practice based on a species disclosed in an earlier application (foreign or domestic) when claims of the U.S. application are not supported under § 119 in the priority document (*see In re Gosteli*, 872 F.2d 1008, 10 USPQ2d 1614 (Fed. Cir. 1989) and *In re Scheiber*, 587 F.2d 59, 199 USPQ 782 (CCPA 1978), and compare to the so-called one species is sufficient for priority ''rule''), and (d) the fact that under interference practice since 1985, patentability is an issue which can be raised whereas prior to 1985, priority was ''not ancillary'' and could not be raised. A notice of proposed rulemaking will be issued in due course to address the issue, as well as other issues raised in comments responding to the current Notice of Proposed Rulemaking. A comment that the language of the proposed amendment to § 1.601(g) fails to take into account the fact that a patent may be accorded benefit of the filing date of an earlier foreign application during the interference is, however, well taken. Accordingly, § 1.601(g) is revised to make clear that a patent may be entitled to benefit under 35 U.S.C. 119.

As proposed in the Notice of Proposed Rulemaking, § 1.601(j) is revised by changing ''which'' to ''that.'' One comment suggested changing ''that corresponds to a count'' to ''that is designated to correspond to a count'' for clarity and consistency with the language in § 1.601(f). The suggestion is being adopted.

In § 1.601, paragraph (1) is revised, as proposed, by changing ''assignee'' to ''assignee of record in the Patent and Trademark Office.''

Paragraph (q) of § 1.601 is revised by deleting ''a panel of'' as superfluous.

Section 1.602 is revised by changing ''within 20 days of'' to ''within 20 days after.'' One comment suggested clarification of the meaning of ''any right, title and interest,'' noting involvement in several disputes over whether this includes a relationship such as a non-exclusive license, and also questioned whether the rule requires a party in a three-party interference to disclose that it is paying another party's expenses or attorney fees. The suggestion, which is outside the scope of the present rulemaking, is not being adopted at this time. The suggestion will be made the subject of a future notice of proposed rulemaking.

Sections 1.603 and 1.606 are revised, as proposed, by deleting the third sentence (''Each count shall define a separate patentable invention.'') as redundant in view of the identical sentence in § 1.601(f) and by requiring that each application to be put into interference contain, or be amended to contain, at least one claim which is patentable over the prior art and which corresponds to each count. The introductory language in each of these sections (''Before an interference is declared * * *'') makes it clear that the patentability requirement applies at the time that the interference is declared, as opposed to at all times during the interference.

One comment suggested that §§ 1.603 and 1.606 be further revised to require the examiner to examine all of the prior art in all of the potential parties' application and patent files in making a patentability determination. The suggestion is not being adopted. Ordinarily, the examiner determines that claims are patentable before an interference is declared. While there may be no express statement, consideration of whether claims are patentable in one application to be placed in an interference normally would involve consideration of prior art in a second application to be placed in the same interference.

In § 1.604, paragraph (a)(1) is revised by changing ''his or her'' to ''its.''

In § 1.605, paragraph (a) is revised for clarification essentially in the manner set forth in the Notice of Proposed Rulemaking. Part of the last sentence of the rules, however, is revised to require an applicant to ''explain why the other claims would be more appropriate to be designated to correspond to a count in any interference which may be declared.'' In responding to a request by an examiner to copy a claim for purpose of a possible interference, an applicant should present the exact claim requested by the examiner. Often, however, an applicant may believe that the claim suggested by the examiner is not appropriate. For example, an applicant may believe it cannot support the exact claim requested by the examiner. Accordingly, while the applicant must present the exact claim requested by the examiner, the applicant is also free to suggest that the exact claim is inappropriate, but that other claims proposed by the applicant are more appropriate to be designated as corresponding to a count of any possible interference. Obviously, the applicant is also free to make a suggestion to the examiner as to what the count should be in any interference. The examiner can then determine whether an applicant's alternatively proposed claims are more appropriate than the exact claim suggested.

One comment suggested that § 1.605 further be revised ''to include a reminder of the statutory prohibition against an *interference* copying claims from a patent issued more than one year, (as Rule 607 already does for applicants), since some examiners have been doing it'' (original emphasis). The comment is understood to mean that examiners have suggested that applicants copy patent claims in violation of 35 U.S.C. 135(b). The suggested reminder is not incorporated into the rule, because it would not implement or interpret any requirement of law, and, while plausibly legitimate, is better made in administrative instructions, such as the Manual of Patent Examining Procedure.

Section 1.606 is also revised, as proposed, by adding a sentence stating that the claim in the application need not be, and most often will not be, identical to a claim in the patent.

One comment suggested that the last sentence of § 1.606, which the Notice of Proposed Rulemaking did not propose to revise, be revised to apply to application claims as well as patent claims and that the sentence be broken into two sentences for clarity, so as to read as follows:

> At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than (i) any application claim designated to correspond to the count and indicated in the form PTO–850 as allowable or (ii) any patent claim designated to correspond to the count. Any single patent claim designated to correspond to the count will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

The suggestion is being adopted; however, because it is inappropriate to refer to a PTO form in a rule, the following language is used:

> At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any application claim that is patentable over the prior art and designated to correspond to the count. Any single patent claim designated to correspond to the count or any patent claim designated to correspond to the count will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

One comment questioned why the declaration of interferences under § 1.606 is limited to unexpired patents, suggesting that there are rare cases where it would be very desirable to have an interference between an application and either a patent that has expired or a patent that has lapsed for failure to pay a maintenance fee. The enabling statute, however, authorizes interferences involving patents which are ''unexpired.'' 35 U.S.C. 135(a).

In § 1.607, paragraph (a)(4) is revised to change ''his or her'' to ''its'' and to add a new paragraph (a)(6) requiring an applicant seeking an interference with a patent to demonstrate compliance with 35 U.S.C. 135(b), which provides:

> A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

Requiring an applicant to show compliance with 35 U.S.C. 135(b) before an interference is declared should prevent an interference from being declared where the applicant cannot satisfy § 135(b) with respect to any claim alleged to correspond to the proposed count. One comment suggested that requiring an applicant who has requested an interference with a patent to demonstrate compliance with § 135(b) is ultra vires. The comment argues that *In re Sasse*, 629 F.2d 675, 207 USPQ 107 (CCPA 1980), precludes an examiner from relying on § 135(b) to refuse to declare an interference and that *Sasse* can only be overruled by statute or decision of the Federal Circuit in banc, citing *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The argument in the comment is not persuasive. *Sasse* held that a claim added in violation of § 135(b) cannot be rejected by PTO under that statute; it did not hold that PTO cannot refuse to declare an interference where all of an applicant's claims that are proposed to correspond to the count fail to satisfy the statute. In fact, the court specifically held that the effect of § 135(b) is that ''a

procedural statutory bar arises proscribing the instigation of interferences after a specified time interval.'' 629 F.2d at 680, 207 USPQ at 110 (original emphasis).

In § 1.608, paragraphs (a) and (b) are revised in several respects, as proposed. First, both paragraphs are revised by removing the information about effective filing dates, which appears instead in § 1.601(g), as amended. Second, the current requirement of paragraph (a) for an affidavit filed by the applicant has been relaxed. Paragraph (a), as amended, permits a statement to be filed by the applicant or a practitioner of record. Third, ''sufficient cause'' in paragraph (b) of § 1.608 and in other interference rules is changed to ''good cause'' in order to make it clear that only one ''cause'' standard is intended. Fourth, ''8½ x 11 inches (21.8 by 27.9 cm.)'' is changed to ''21.8 by 27.9 cm. (8½ x 11 inches)'' to put the emphasis on the metric measurements. Fifth, the phrase ''(§ 1.653(g) and (h)'') is revised to read ''(§ 1.653(g))'' in view of the removal and reservation of § 1.653(h).

One comment stated a belief that there may be some confusion regarding the application of § 1.608(b) when the basis upon which an applicant is entitled to judgment is not priority of invention. According to the comment, while § 1.608(b) appears to include derivation as a basis, it is uncertain whether it applies in a situation where the applicant believes the patent claims are unpatentable over prior art that does not also render unpatentable the applicant's claims. The suggested change is not necessary. The comment's statement that derivation (35 U.S.C. 102(f)) provides a basis for a showing under § 1.608(b) is correct. Section 1.608(b) requires an applicant to explain why the applicant is entitled to judgment *vis-a-vis* the patentee. As explained in the Notice of Final Rule, 49 FR 48416, 48421 (Dec. 12, 1984), ''[t]he evidence may relate to patentability and need not be restricted to priority.'' Such evidence could be, for example, evidence relating to derivation as noted by the comment.

The Notice of Proposed Rulemaking proposed that § 1.609(b)(2), be revised to require the examiner's statement (i.e., currently Form PTO–850, also known as the initial interference memorandum) to explain why each claim designated as corresponding to a count is directed to the same patentable invention as the count. It was also proposed that § 1.609(b)(3) be revised to require the examiner's statement to explain ''why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count.'' The purpose of these amendments is to provide the Board and the parties with the benefit of the examiner's reasoning and to provide a better foundation for considering preliminary motions to designate claims as corresponding or as not corresponding to a count.

Paragraph (b)(2) is revised essentially as proposed in the Notice of Proposed Rulemaking. Upon further reflection, no need is seen for the examiner to indicate whether a claim corresponds exactly or substantially to a count.

One comment suggested that the proposed requirement of § 1.609(b)(3) may be unduly burdensome in multi-count interferences if it requires an examiner to explain not only why an involved claim corresponds to one count, but also why that claim does not correspond to each other count. Another comment, apparently construing the proposed language in the same way, suggested that the requirement could be made clearer by modifying the proposed language to read, ''why each claim designated as not corresponding to *each* (or *the*) count is not directed to the same patentable invention as the count.'' To make it clear that such a requirement is not intended, the proposed amendment is withdrawn and paragraph (b)(3) is instead revised to read, ''why each claim designated as not corresponding to *any* count is not directed to the same patentable invention as *any* count.'' Under § 1.609(b)(3), as adopted, the examiner's statement need not explain why a claim that is designated as corresponding to one count is not directed to the same patentable invention as another count in the interference.

One comment suggested that interferences involving patentees who are incontestably junior could be shortened by amending the rules to require a junior party patentee, prior to the preliminary motion period, to make a prima facie case of priority of the type currently required of junior party applicants by § 1.608. The suggestion is outside the scope of the present rulemaking and is not being adopted, but may be considered in a future notice of proposed rulemaking.

One comment suggested that §§ 1.609(b)(1) and 1.611(c)(6) also be revised to require that the examiner and the declaration notice explain, when there will be more than one count, why each count is patentably distinct from the other counts. The suggestion is being adopted.

Section 1.610(a) is revised by deleting the language ''a panel consisting of at least three members of'' as superfluous and by deleting the reference to § 1.640(c), which is revised to allow a request for reconsideration under § 1.640(c) to be decided by an individual administrative patent judge rather than by the Board. Section 1.610(b) is also revised by deleting ''Unless otherwise provided in this section,'' as unnecessary in light of the amendment to paragraph (a).

One comment suggested that § 1.610(a) be revised to provide that an interference is handled throughout, including final hearing, by a single administrative patent judge, thereby avoiding the delays that occur when an issue is deferred to final hearing for decision by a three-member panel. The comment also suggested that § 1.610(b) be revised to provide that, at the discretion of the administrative patent judge, a panel consisting of two or more administrative patent judges may sit at final hearing (as well as deciding interlocutory orders). The suggestions have not been adopted. First, the suggestions are outside the scope of the present rulemaking. Second, the suggestions could not be implemented without amendment of 35 U.S.C. 7(b), which requires that an interference must be decided by at least three members of the Board.

One comment suggested that the second sentence of § 1.610(c) (''Times for taking action shall be set, and the administrative patent judge shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.'') be removed as wishful thinking that only confuses district court judges confronted with a motion to stay a civil action pending the outcome of an interference. The suggestion is not being adopted. The two-year period, while not always attainable, is nevertheless believed to be realistic.

The Notice of Proposed Rulemaking proposed amending § 1.611 by redesignating paragraph (c)(8) as paragraph (c)(9) and adding a new paragraph (c)(8) requiring that a notice of declaration of interference state ''[w]hy each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count.'' For the reasons given above in the discussion of § 1.609(b)(3), the proposed language is changed to read, ''[t]he examiner's explanation as to why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each

claim designated as not corresponding to any count is not directed to the same patentable invention as any count.'' The examiner's explanation should assist the parties in deciding whether to move to have claims designated as corresponding or not corresponding to the count. Normally, parties can expect that a copy of the examiner's explanation will accompany the notice declaring the interference. It should be understood that in declaring the interference, the administrative patent judge is neither agreeing nor disagreeing with the examiner's explanation and that the explanation is not binding on the administrative patent judge or the Board in further proceedings in the interference. As proposed in the Notice of Proposed Rulemaking, the first word in each of paragraphs (d)(2) and (d)(3) is also capitalized.

One comment suggested deleting '', oppositions to the motions, and replies to the motions'' from § 1.611(d)(3) as surplusage. The suggestion is being adopted. In addition, paragraphs (d)(1), (d)(2) and (d)(3) are revised to be separately indented under paragraph (d).

Paragraph (a) of § 1.612 is revised to change ''opposing party's'' to ''opponent's'' and to add a sentence referring to § 1.11(e) concerning public access to interference files. One comment suggested amending § 1.612(a) to provide for automatic access to an application referred to in an opponent's involved case rather than requiring a motion for access under § 1.635, as under the current rule. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

Regarding § 1.613, one comment suggested that paragraph (c) be revised to give an administrative patent judge the authority to decide disqualification questions rather than requiring such questions to be referred to the Commissioner. Under current practice, the authority to decide motions for disqualification of counsel in cases before the Board of Patent Appeals and Interference has been delegated by the Commissioner to the Chief Administrative Patent Judge. Administratively, it is more appropriate that authority to decide disqualification matters be capable of being delegated to specific individuals rather than being assigned to administrative patent judges generally through a rule. The comment also suggested that paragraph (d) be revised to clarify whether ''attorney or agent of record'' includes an attorney or agent who is merely ''of counsel.'' The term ''attorney or agent of record'' in the interference rules should be construed in the manner it is defined in 37 CFR 1.34(b). The rules do not recognize, or use, the term ''of counsel.'' Accordingly, the suggestions are not being adopted. Furthermore, each suggestion is outside the scope of the present rulemaking.

Paragraph (a) of § 1.614 is clarified, as proposed in the Notice of Proposed Rulemaking, by changing ''the Board shall assume jurisdiction'' to ''the Board acquires jurisdiction.'' One comment suggested amending § 1.614(c) (''An administrative patent judge, where appropriate, may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.'') by deleting the current language '', when appropriate,'' as surplusage in view of ''may.'' The suggestion is being adopted.

In addition to amending § 1.616 to authorize an award of compensatory attorney fees and expenses in appropriate circumstances, as discussed above, current paragraph (b), which is redesignated as paragraph (a)(2), is revised to permit a party to be sanctioned for failing to comply with the rules or an order by entering an order precluding the party from filing ''a paper.'' Current paragraph (b) permits entry of an order precluding the filing only of a motion or a preliminary statement. The term ''paper'' will be given a broad construction, and includes a motion, a preliminary motion, a preliminary statement, evidence in the form of documents, a brief, or any other paper.

Section 1.617(b) is revised, as proposed, to authorize a party against whom a § 1.617(a) order to show cause has been issued to respond with an appropriate preliminary motion under § 1.633 (c), (f) or (g). The reason is that a preliminary motion under § 1.633(c) to redefine the interference, under § 1.633(f) for benefit of the filing date of an earlier application or under § 1.633(g) attacking the benefit accorded a patentee may be appropriate where the count set forth in the notice declaring the interference is not the same as the count proposed in the applicant's showing under § 1.608(b). A preliminary motion under § 1.633 (f) or (g) may also be appropriate where the count set forth in the notice declaring the interference is the same as the count proposed in the applicant's showing under § 1.608(b), but the notice either fails to accord the applicant the benefit of the filing date of an earlier application whose benefit was requested in the § 1.608(b) showing or accords the patentee the benefit of the filing date of an earlier application whose benefit the § 1.608(b) showing argued should not be accorded the patentee.

One comment suggested that § 1.617(b) be revised to state that a change of counsel is not ''good cause'' for presenting additional evidence in response to a § 1.617(a) show cause order, noting the similar amendment proposed in the Notice of Proposed Rulemaking for § 1.655(b). The suggestion is not being adopted. Moreover, the statement that a change of attorney is not generally good cause is not being added to § 1.655(b) as proposed. Upon reflection, it is better to leave the term ''good cause'' to be decided on a case-by-case basis. The proposed amendments to the rules to state that a change of attorney is generally not good cause for considering an issue belatedly raised by a new attorney is generally correct. In fact, recent experience shows that parties often retain new counsel after they find that ''they are in trouble in the interference.'' Retaining new counsel midway through the case is almost never a reason to subject the opponent to starting over again. On the other hand, the rules use the term ''good cause'' in various places and PTO does not want to incorrectly give the impression that change of attorney is not good cause only when specifically stated in a rule which uses the phrase ''good cause.'' Nor does PTO want to have a per se rule which says that a change of attorney cannot be good cause in any instance, although it would be rare for a change of attorney to be good cause.

One comment suggested that the second sentence of § 1.617(d) be revised to indicate that any statement filed by an opponent may set forth views as to why any (c), (f) or (g) motion filed by the applicant should be denied. The suggestion is not being adopted. The first sentence of § 1.617(d) as revised authorizes an opponent to file an opposition to any (c), (f) or (g) motion filed by the applicant, which opposition should include views as to why any (c), (f) or (g) motion filed by the applicant should be denied.

Another comment suggested that § 1.617(d), which currently prohibits an opponent from requesting a hearing, be revised to permit such a request on the ground that a hearing is the opponent's best chance to pretermit the whole interference process. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

The Notice of Proposed Rulemaking proposed amending the first sentence of § 1.618(a), which currently reads ''The Patent and Trademark Office shall return to a party any paper presented by the party when the filing of the paper is

unauthorized by, or not in compliance with the requirements of, this subpart'' to read: ''An administrative patent judge or the Board shall enter an order directing the return to a party of any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart.'' The Notice of Proposed Rulemaking also proposed amending the second sentence of paragraph (a), which currently states that any paper returned ''will not thereafter be considered by the Patent and Trademark Office in the interference,'' by deleting ''by the Patent and Trademark Office.'' One comment questioned why the phrase ''by the Patent and Trademark Office'' is proposed to be removed. The reason is that the phrase is superfluous. Another comment questioned who is being ordered to return the paper and suggested that § 1.618(a) be revised to simply provide that the administrative patent judge shall return the unauthorized papers, with the understanding that it is the administrative patent judge's secretary who actually mails orders, opinions, etc. The suggestion is being adopted, but with the rule stating that the paper shall be returned by an administrative patent judge or the Board. Although not proposed in the Notice of Proposed Rulemaking, the last sentence of § 1.618(a), which states that a party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an administrative patent judge, is revised to also allow the Board to set such conditions.

One comment suggested an amendment to § 1.622(a) to clarify that the inventors named in the preliminary statement do not have to be all of the inventors named in the party's case in interference, citing *Larson v. Johenning,* 17 USPQ2d 1610 (Bd. Pat. App. & Int. 1990). The comment alternatively suggested dropping preliminary statements altogether on the grounds that they are (a) useless and (b) a snare and a delusion. These suggestions are outside the scope of the present rulemaking and are not being adopted.

Section 1.625(a) is revised, as proposed, by deleting ''the invention was made in the United States or abroad and'' as surplusage.

Section 1.626 is revised, as proposed, by revising ''earlier application filed in the United States or abroad'' to read ''earlier filed application.'' The same change is made in §§ 1.630, 1.633(f), 1.633(g), 1.637(c)(1)(vi), 1.637(e)(1)(viii), 1.637(e)(2)(vii) and 1.637(h)(4).

Section 1.628(a) is revised, as proposed, to change ''ends of justice'' to ''interest of justice'' to be consistent with the language used in §§ 1.628(a) and 1.687(c), since a single standard is intended. The ''interest of justice'' requirement will be applied only to corrected preliminary statements that are filed on or after the due date for serving preliminary statements. Where the moving party has not yet seen the opponent's statement, an opponent normally will not be prejudiced by the filing of a corrected statement. One comment raised the following question:

> What is the standard if the motion is filed *before* the time set by the APJ for service of preliminary motions [sic, statements]? If, as implied by the comments, amendments prior to that date can be made freely, why not simply provide that the preliminary statements (if they are to be retained at all) are to be filed and served on the date set by the APJ pursuant to 37 CFR 1.628(a)? Particularly where it is obvious that the count(s) is or are going to be changed anyway, all of the parties' work preparing and the PTO's work in processing the original preliminary statement is wasted effort anyway.

(Original emphasis; footnote omitted.) The standard for a motion to amend that is filed before service of preliminary statements is that it be accompanied by an affidavit stating when the error occurred and be filed ''as soon as practical after discovery of the error.'' The suggestion that preliminary statements be filed and served on the date set by the administrative patent judge pursuant to 37 CFR 1.628(a) is not understood, since that rule does not provide for setting such a date. Instead, the provisions relating to filing and serving preliminary statements appear in §§ 1.621(a) and 1.631, respectively. To the extent the comment is suggesting that these provisions be revised, the suggestion is outside the scope of the present rulemaking and is not being adopted.

As proposed in the Notice of Proposed Rulemaking, paragraphs (a), (c)(1) and (d) of § 1.629 are revised to make each consistent with the amendment of the definition of ''effective filing date'' in § 1.601(g). One comment suggested that in § 1.629(a), second sentence, the comma between ''statement'' and ''as,'' which was proposed to be removed, be retained for clarity. As suggested, the comma is retained.

The first sentence of § 1.631(a) is revised by removing ''by the examiner-in-chief'' (first occurrence) as superfluous. The Notice of Proposed Rulemaking incorrectly proposed to remove the second occurrence of this phrase. Thus revised and with the remaining occurrences of ''examiner-in-chief'' changed to ''administrative patent judge,'' the first sentence of § 1.631(a), as it was proposed to be revised, reads as follows: ''Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633, any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement.'' (The proposed language set forth in the Notice of Proposed Rulemaking inadvertently omitted the phrase, ''concurrently with entry of a decision on preliminary motions filed under § 1.633,'' which appears in the current rule and was not proposed to be removed.) In order to make it clear that the phrase ''concurrently with entry of a decision on preliminary motions filed under § 1.633'' modifies the succeeding phrase rather than the preceding phrase, the second comma is removed, so that the first sentence of § 1.631(a) as revised reads as follows: ''Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633 any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement.''

Section 1.632 is revised, as proposed, to more precisely state that a notice of intent to argue abandonment, suppression or concealment must be filed ''within ten days after,'' rather than ''within ten days of,'' the close of the testimony-in-chief of the opponent. One comment suggested that § 1.632 be further revised to (1) state what happens next and (2) provide a period for shifting the burden of proof. The suggestion is outside the scope of the present rulemaking, and is not being adopted.

Several comments were received with respect to § 1.633 in general. Two of the comments noted that § 1.642, which presumably was intended to allow an administrative patent judge to add a new party to an interference, has also been used to ''request'' addition of an application or patent of an already involved party, citing *Theeuwes* v. *Bogentoft,* 2 USPQ2d 1378 (Comm'r Pat. 1986). The two comments suggested that § 1.633 be revised to specifically provide for a motion to request addition of an application or patent of a party in order to make it clear that the standards for preliminary motions apply. Two other comments suggested amending §§ 1.633 and 1.637(h) to authorize a

motion to *add* a claim to a party's application or an opponent's application (including a reissue application) to be designated as *not* corresponding to the count, thereby removing what is alleged to be one of the major drawbacks of the current rules. Still another comment suggested that in order to avoid the inefficiencies that result when prior art surfaces for the first time in a motion under § 1.633(a), which may render moot other preliminary motions, the parties should be required to file and serve all relevant prior art of which they are aware prior to the preliminary motion period. While some of the suggestions have merit, all are outside the scope of the present rulemaking and are not being adopted.

As proposed in the Notice of Proposed Rulemaking, paragraph (a) of § 1.633 is revised in several respects. The first is to specify that a claim shall be construed in light of the specification of the application or patent in which it appears. The amendment clarifies an ambiguity in PTO interference practice. Previously, the Federal Circuit had interpreted § 1.633 to require an ambiguous claim to be interpreted in light of the patent from which it was copied. *In re Spina,* 975 F.2d 854, 856, 24 USPQ2d 1142, 1144 (Fed. Cir. 1992). While this interpretation was a possible interpretation of previous § 1.633, PTO had intended that a copied claim be interpreted in light of the specification of the application or patent in which it appears. The rule, as adopted, will make ex parte and inter partes practice the same. A claim that has been added to a pending application for any purpose, including to provoke an interference, will be given the broadest reasonable interpretation consistent with the disclosure of the application to which it is added, as are claims which are added during ex parte prosecution. As explained *In re Zletz,* 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989):

> [d]uring patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *See In re Prater,* 415 F.2d 1393, 1404–05, 162 USPQ 541, 550–51 (CCPA 1969) (before the application is granted, there is no reason to read into the claim the limitations of the specification). The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. *Burlington Industries, Inc.* v. *Quigg,* 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987); *In re Yamamoto,* 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984).

If a party believes an opponent's claim corresponding to the count is ambiguous when construed in light of the opponent's disclosure, the party should move under § 1.633(a) for judgment against the claim on the ground of unpatentability under the second paragraph of 35 U.S.C. 112. In paragraph (a), ''by reference to the prior art of record'' is removed as unnecessary. Paragraphs (a)(1) and (a)(2) of § 1.633 are revised by deleting some unnecessary language from each paragraph and by changing ''derivation'' to ''Derivation'' in paragraph (a)(2). One comment suggested changing ''corresponding to a count'' in § 1.633(a) to ''designated to correspond to a count'' for consistency with § 1.601(f), as amended. The suggestion is being adopted.

Although not proposed in the Notice of Proposed Rulemaking, § 1.633(a) is also revised by adding a sentence requiring that the motion separately address each claim alleged to be unpatentable. For example, where a plurality of claims are alleged to be unpatentable over prior art, the motion must compare each of those claims to the prior art. As a result, a party would not be allowed to allege that all of the opponent's claims that correspond to the count are unpatentable simply because the opponent's claim that corresponds exactly to the count is anticipated by, or would have been obvious in view of, the prior art. At the time an interference is declared, it may appear (and the parties may then believe) that all claims designated as corresponding to a count are directed to the same patentable invention. Once additional prior art is discovered in the preliminary motion period, however, what was the case when the interference was declared may no longer be the case. Hence, a preliminary motion under § 1.633(a) alleging unpatentability over the prior art should address each claim believed to be unpatentable. In the case where a party has two claims, e.g., a genus and a species, if a preliminary motion under § 1.633(a) is filed by an opponent which argues that only the genus is unpatentable, the party will need only respond to the argument relative to the genus. Thus, to the extent there ever was a perception that all claims designated to correspond to a count stand or fall with the ''patentability of the count,'' the rule as adopted attempts to overcome that perception. There is no presumption in an interference that because one claim designated to correspond to a count is unpatentable over the prior art (35 U.S.C. 102 (a), (b) and (e)), that all claims are unpatentable over the same prior art. On the other hand, in deciding priority of invention, all claims designated to correspond to a count at the time priority is decided will stand or fall together on the issue of priority.

Section 1.633(b), which concerns motions for judgment on the ground of no interference-in-fact, was proposed to be revised to state that it is possible for claims of opponents presented in ''means plus function'' format to define separate patentable inventions even though the claims of the opponents contain the same literal wording. The reason is that the sixth paragraph of 35 U.S.C. 112, which is applicable to ''means plus function'' limitations in application claims and patent claims, provides that such limitations are to be construed as covering the corresponding structure disclosed in the associated application or patent and equivalents thereof. *In re Donaldson Co.,* 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). The proposed change has been adopted, but with the proposed term ''opponents'' being replaced by ''different parties.'' One comment suggested that in addition to *Donaldson,* support for the amendment can be found in *Blackmore* v. *Hall,* 1905 Dec. Comm'r Pat. 561 (Comm'r Pat. 1905), and the withdrawn opinion in *Rion* v. *Ault,* 455 F.2d 570, 172 USPQ 588 (1972) (Rion I), *modified,* 482 F.2d 948 (CCPA 1973) (Rion II), which the comment says stand for a proposition even broader than the one set forth in the proposed amendment. Inasmuch as *Blackmore* predates the statutory language in question and *Rion I* was withdrawn by the CCPA, the suggestion is not being adopted.

Paragraph (i) of § 1.633, which in its current form authorizes a party who opposes a preliminary motion under § 1.633 (a), (b) or (g) to file a preliminary motion under § 1.633 (c) or (d), is revised to additionally authorize a party-patentee to file a preliminary motion under § 1.633(h) to add to the interference an application for reissue of the party's involved patent. Because a reissue application can include an amended or new claim to be designated as corresponding to a count, paragraph (i) as revised gives a patentee an option similar to that afforded in the same situation to a party-applicant, who can file a preliminary motion under § 1.633(c)(2) to amend a claim in, or add a claim to, its involved application to be designated as corresponding to a count. One comment suggested further amending § 1.633(i) to authorize a § 1.633(c)(1) motion in response to an

opponent's § 1.633(c)(1) motion. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

One comment suggested that § 1.636, as proposed to be revised, which requires that a motion under § 1.634 to correct inventorship of a patent or application ''be diligently filed after an error is discovered'' is ultra vires with respect to patents. The suggestion is outside the scope of the present rulemaking and is not being adopted. The suggestion will be considered in a future rulemaking.

The Notice is Proposed Rulemaking proposed amending paragraph (a) of § 1.637 to incorporate the essence of a notice of August 10, 1990, *published as* ''Interferences—Preliminary Motions for Judgment,'' 1118 Off. Gaz. Pat. Office 19 (Sept. 11, 1990). Specifically, the Notice of Proposed Rulemaking proposed adding the following language at the end of the paragraph:

> If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to be the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party. If the motion fails to include a sufficient explanation or evidence, the party will not be permitted to rely on any such explanation or evidence in response to or in any subsequent action in the interference.

Two comments suggested that the proposed last sentence is imprecise in that although it is presumably intended to preclude a party whose motion an administrative patent judge has held to include an insufficient explanation or evidence from later *supplementing* the explanation or evidence offered in the motion, the sentence is broad enough to be construed as also precluding the party from relying on the arguments and evidence that were offered *in* the motion. Accordingly, one of the comments suggested that the proposed last sentence be replaced by the following two sentences: ''If the administrative patent judge holds that the motion fails to include a sufficient explanation or evidence as to why the cited prior art is not applicable to the party, the party will not be permitted to supplement any such explanation or evidence in any subsequent action in the interference. However, the party is not precluded from subsequently arguing that the administrative patent judge's decision was incorrect.'' The substance of the suggestions is believed to be correct, but the suggested language will not be adopted. Instead, § 1.637(a) is revised to read:

> A party filing a motion has the burden of proof to show that it is entitled to the relief sought in the motion. Each motion shall include a statement of the precise relief requested, a statement of the material facts in support of the motion, in numbered paragraphs, and a full statement of the reasons why the relief requested should be granted. If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party.

Rather than specify a particular sanction for failure of a party to comply with § 1.637(a), as adopted, it is more appropriate to rely on application of the provisions of § 1.618. A party who fails to timely include the explanation and/or evidence required by the rule runs a considerable risk that an explanation and/or evidence presented at a future time will be returned as untimely. See § 1.618(a). Papers which are returned are not considered part of the record.

Section 1.637(a) was proposed to be revised to state that the statement of material facts be ''preferably in numbered paragraphs.'' One comment suggested that numbered paragraphs be a requirement, because it would make matters easier for opponents as well as administrative patent judges. The suggestion is being adopted. Ordinarily, it will be expected that each numbered paragraph will recite a single fact which can easily be ''admitted'' or ''denied.'' The use of numbered paragraphs should make the decision-making process of the administrative patent judge easier.

Another comment suggested that § 1.637(a) be revised to require that motions, oppositions and replies be numbered sequentially, so that party X's opposition No. 1 will be its opposition to party Y's motion No. 1, etc. The suggestion, while having considerable merit, is outside the scope of the present rulemaking, and is not being adopted. The suggestion will be made the subject of a future rulemaking effort. In papers filed in PTO in interference cases, there is an increasing tendency for parties to use ''long'' titles, e.g., PARTY SMITH'S PRELIMINARY MOTION FOR DECLARATION OF PARTY OPPONENT RAYMOND'S CLAIMS TO BE UNPATENTABLE UNDER 37 CFR § 1.633(a). The opponent then responds with an opposition styled PARTY RAYMOND'S OPPOSITION TO PARTY SMITH'S PRELIMINARY MOTION FOR DECLARATION OF PARTY OPPONENT RAYMOND'S CLAIMS UNPATENTABLE UNDER 37 CFR § 1.633(a). The reply then tends to be PARTY SMITH'S REPLY TO PARTY RAYMOND'S OPPOSITION TO PARTY SMITH'S PRELIMINARY MOTION FOR DECLARATION OF PARTY OPPONENT RAYMOND'S CLAIMS UNPATENTABLE UNDER 37 CFR § 1.633(a). It should be apparent that the styling of the paper loses its significance. Accordingly, pending a further rulemaking effort parties in interference can simplify matters by voluntarily adopting the essence of the suggestion by replacing the styling of the three papers identified above with the following: (1) SMITH'S PRELIMINARY MOTION NO. 1; (2) RAYMOND'S OPPOSITION NO. 1; and (3) SMITH'S REPLY NO. 1. If numerous motions are filed, then sequential numbers can be used. In a two-party interference, if the parties can agree, one can use numbers and the other letters. In any event, it would be of considerable help to the Board if the style of a paper does not exceed a single line.

As proposed in the Notice of Proposed Rulemaking, § 1.637(a) is also revised by changing ''Every'' in the second sentence to ''Each.''

Section 1.637(c)(1) sets forth the requirements for a preliminary motion to add or substitute a proposed count. The Notice of Proposed Rulemaking proposed amending paragraph (c)(1)(v) in two respects: (1) To require a moving party to show that the proposed count is patentable over the prior art; and (2) to specify that a proposed substitute count need only be shown to be patentably distinct from the other counts proposed to remain in the interference, since a proposed substitute count need not be patentably distinct from the count it is to replace. Several comments opposed amending § 1.637(c)(1)(v) to require a party to show that a proposed new count is patentable over the prior art, stating, *inter alia*, that the date of a count for purposes of determining what is available as prior art is not clear. The statements in the comment are well taken for the reasons given above in the discussion of § 1.601(f). Accordingly, the proposal to amend paragraph (c)(1)(v) to require the moving party to show the patentability of a proposed new count over the prior art is withdrawn. Paragraph (c)(1)(v) is revised only to require that a proposed substitute count must be shown to be

patentably distinct from the other counts proposed to remain in the interference.

As proposed in the Notice of Proposed Rulemaking, § 1.637(c)(1)(vi) is revised to clarify that a preliminary motion under § 1.633(c)(1) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count.

In order to eliminate the need for an opponent to respond to a § 1.633(c)(1) motion with a preliminary motion under § 1.633(f) claiming benefit, which has the effect of delaying a decision on the § 1.633(c)(1) motion, the Notice of Proposed Rulemaking also proposed amending § 1.637 by adding a new paragraph (c)(1)(vii) reading as follows:

> If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

One comment suggested clarifying the first sentence by inserting ''and if the movant desires a holding that its opponent is not entitled to the benefit of the filing date of the earlier filed application for the proposed count'' after ''interference.'' The same change was suggested for proposed new §§ 1.637(e)(1)(ix) and 1.637(e)(2)(viii), which are identical to § 1.637(c)(1)(vii). The suggestion is not being adopted. The rule, as amended, states that a moving party must take a positive action if it believes an opponent is not entitled to benefit for a new count. Failure to take the positive action creates a presumption. The rule, as amended, also states the consequences of not taking a positive action. Taking the positive action is the manner to procedurally attempt to overcome the presumption. Hence, the suggested ''clarification'' is not necessary.

As proposed, minor housekeeping amendments are made to §§ 1.637(c)(2)(ii) and (iii) for clarification, and §§ 1.637(c)(2)(iv) and 1.637(c)(3)(iii), which relate to § 1.633(f) motions for benefit, are removed and reserved as unnecessary, since motions under § 1.633(c) (2) and (3) do not affect the count. Section 1.637(c)(3)(ii), which applies to motions under § 1.633(c)(3) to designate a claim as corresponding to a count, is revised to have claims compared to claims, as is the case in § 1.633(c)(4)(ii), which applies to motions filed under § 1.633(c)(4) to designate a claim as not corresponding to a count. The amendment avoids the need to compare claims to counts.

Section 1.637(c)(4)(ii) was proposed to be revised to require that a party moving to designate a claim as not corresponding to a count must show that the claim could not serve as the basis for a preliminary motion under § 1.633(c)(1) to add a new count. As revised, the rule precludes a party from moving to designate one of its claims as not corresponding to the count where an opponent's disclosure would support a similar claim. The supporting rationale is that the party could file a § 1.633(c)(1) preliminary motion proposing a claim to be added to the opponent's application and suggesting that the proposed claim and the party's claim in question be designated as corresponding to a proposed new count. One comment argues that the proposed amendment would unduly burden a party by requiring it to propose claims to be added to an opponent's application, whereas under the current rule the opponent, who has the option to propose such a count and such a claim in a motion under § 1.633(c)(1), runs the risk of interference estoppel by not pursuing an interference on common patentable subject matter. Thus, the comment notes that the effect of the proposed requirement would be to require a party to prevent its opponent from possibly getting itself into an estoppel situation. The point of the comment is well taken. Accordingly, the proposal to amend § 1.637(c)(4) in the manner criticized by the comment hereby withdrawn.

As proposed in the Notice of Proposed Rulemaking, § 1.637(d)(4), which authorizes a party to file a motion for benefit together with a motion under § 1.633(d), is removed and reserved as unnecessary. Motions filed under § 1.633(d) do not affect the count. Sections 1.637(e)(1)(viii) and (e)(2)(vii) are revised to make it clear that a preliminary motion under §§ 1.633(e)(1) or (e)(2) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count. As proposed, §§ 1.637(e)(1)(ix) and (e)(2)(viii) are added specifying that where a party is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, that party is presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

Section 1.637(f)(2) is revised, as proposed, by changing ''abroad'' to ''in a foreign country'' and removing both occurrences of ''filed abroad'' as superfluous.

The Notice of Proposed Rulemaking proposed to amend § 1.637(h) by adding a sentence stating that ''[a] patentee may not move under § 1.633(h) to add a reissue application that includes new or amended claims to be designated as not corresponding to a count.'' The purpose of the proposal was to make clear that a preliminary motion to add a reissue application that includes a new or amended claim to be designated as *not* corresponding to a count will be given the same treatment as a preliminary motion proposing to amend a claim in, or add a new claim to, an involved application to be designated as not corresponding to the count, i.e., the preliminary motion will be dismissed. *See L'Esperance V. Nishimoto*, 18 USPQ2d 1534, 1537 (Bd, Pat. App & Int. 1991) (interference rules do not authorize a motion by party-applicant to amend or add a claim to be designated as not corresponding to the count). Several comments were received in opposition to this proposal, one of which stated:

> As understood, this would prevent moving to add any reissue application to an interference if even a single claim of that reissue was independently patentable, i.e., properly not subject to the interference, even if some or most of the other claims were the same as, or patentably indistinct from, claims already subject to the interference.
>
> It is not seen why patent owners should be deprived of their statutory and normal *ex parte* right to have and maintain reissue applications with appropriate claims to inventions disclosed in their specifications, simply to meet a new interference rule requirement that appears to be solely for administrative convenience for the interference proceeding.

The statement in the comment is justified. The rule as proposed to be revised would unfairly preclude a patentee whose involved claims are all held to be unpatentable during the interference (e.g., under 35 U.S.C. 112, first paragraph, for lack of written description support) from adding a reissue application that contains new or amended claims to be designated as corresponding to a count simply because the reissue application also happens to include a new or amended claim to be designated as not corresponding to a count. Accordingly, the proposed amendment to paragraph (h) is hereby withdrawn.

As proposed in the Notice of Proposed Rulemaking, § 1.638(b) is revised by changing ''a reply'' to ''any reply.''

One comment suggested amending § 1.638(a) to take into account that an opposition may be based on material facts that are not set forth in the motion, by changing ''(2) include an argument

why the relief requested in the motion should be denied'' to ''(2) set forth in numbered paragraphs any material facts in support of the opposition not set forth in the motion and include an argument why the relief requested in the motion should be denied.'' A similar amendment was suggested for paragraph (b) as to replies. The suggestions, which are outside the scope of the present rulemaking, are not being adopted. The suggestions would appear to have considerable merit and will be made the subject of a future rulemaking effort.

Paragraph (a) of § 1.639, which currently requires that a motion, opposition or reply be accompanied by the evidence on which a party intends to rely in support of or in opposition to a motion, is revised as proposed in the Notice of Proposed Rulemaking to be consistent with paragraphs (c) through (g), which permit some types of evidence to be filed after filing of the motion, opposition or reply. In addition, paragraph (d)(1) is revised, as proposed, by changing ''call'' to ''use.''

One comment expressed concern about § 1.639(a) to the extent it is construed as requiring that all available evidence in support of a motion, opposition or reply must be filed and served with the motion, opposition or reply, which is presumed to be a reference to the construction given § 1.639 in *Irikura v. Petersen,* 18 USPQ2d 1362, 1368 (Bd. Pat. App. & Int. 1990):

> A good faith effort must be made to submit evidence to support a preliminary motion or opposition when the evidence is available. *Orikasa v. Oonishi,* [10 USPQ2d 1996, 2000 n.12 (Comm'r Pat. 1989]. Note the commentary [*Patent Interference Proceedings; Final Rule,*] 49 F.R. [48416], at 48442 (Dec. 12, 1984), 1050 O.G. [385], at 411 (Jan. 29, 1985]), [*corrections*] 50 F.R. 23122 (May 31, 1985), 1059 O.G. 27 (Oct. 22, 1985).

See also Okada v. Hitotsumachi, 16 USPQ2d 1789, 1790 (Comm'r Pat. 1990). Specifically, the comment notes that:

> [t]o permit testimony beyond the evidence filed with the motion, has been likened to ''two bites of the apple''. I think there is a misunderstanding here, it is not two bites.
>
> For example, a motion for summary judgment that is denied, [sic] does not preclude the party from proving his case at trial with additional evidence. Two bites comes if, after decision on motion, a party tries to bring a second *motion* with additional evidence or argument, or [if] after trial and judgment, the loser wants to introduce more evidence that was available all along. I see nothing wrong with an interference party submitting the prior art and arguing that ''any fool can plainly see'' the subject matter of the count is obvious. That's a sort of motion for summary judgment on the issue. If the APJ does not perceive the obviousness to be apparent, he or she should *invite* the parties to present additional testimony on obviousness during the testimony time, *not block it.* Obviously, the same reasoning would apply to enablement, operability, same patentable invention, etc.

(Original emphasis.) The suggestion that the rules be revised to permit a party to later submit evidence that it could have submitted in support of or in opposition to a preliminary motion is declined for the reasons given in *Hanagan v. Kimura,* 16 USPQ2d 1791, 1793 (Comm'r Pat. 1990) (''the new interference rules were not intended to permit routine requests to take testimony in lieu of presenting timely affidavits and other available proof of material [facts] with the motion''). *See also Staehelin v. Secher,* 24 USPQ2d 1513, 1515 n.3 (Bd. Pat. App. & Int. 1992).

Another comment suggested amending the rules to permit the filing of a motion for ''summary judgment'' shortly (e.g., within two months) after the interference is declared on a matter that may be dispositive of the interference, such as the absence of an interference-in-fact, unpatentability of all of the parties' claims that correspond to the count or unpatentability of all of the opponent's claims that correspond to the count, with testimony being restricted to affidavits and counter-affidavits. *Compare* Fed. R. Civ. P. 56. The comment continues that if the motion is denied by the administrative patent judge, there would be no right of appeal; if the motion is granted, the opponent could appeal to a three-member panel of the board and, if the panel concurs with the decision of the administrative patent judge, the opponent could seek judicial review. To the extent the suggestion is seeking a rule authorizing motions for summary judgment like those provided for in Fed. R. Civ. P. 56, the suggestion is outside the scope of the present rulemaking and is therefore not being adopted. In a future rulemaking effort, PTO will consider whether there is an advantage to be gained by some form of ''summary judgment'' motion.

The Notice of Proposed Rulemaking proposed to amend § 1.640(b) in several respects. First, it was proposed to add a first sentence providing that ''[u]nless an administrative patent judge or the Board is of the opinion that a decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion should be deferred to final hearing.'' One comment indicated that requiring deferral of non-dispositive motions may adversely affect settlement of interferences:

> Under the current procedure, where most motions are initially decided, if a party is faced with a particular decision on a non-dispositive motion, that decision may affect the party's willingness to settle with the opposing party, even knowing that the decision may be changed at final hearing. For example, if a party has proposed a new count that better fits its proofs and the motion proposing the new count is denied, the party may be willing to request adverse judgment (e.g., in exchange for a license) rather than try to prove invention of the original count for which its proofs are not as good, even knowing that there is a chance that the proposed count may be adopted at final hearing. Similarly, a party that has succeeded in having important claims designated as not corresponding to the count may be willing to settle on that basis, even though it may lose certain other claims. To the extent that early decisions on preliminary motions motivate settlement in that way, the proposed amendments will decrease the settlement rate of interferences, adding to the workload of the Board and of practitioners.

While the comment can be correct in some interferences, it may not be true in other interferences. In those interferences where decision on a preliminary motion is likely to lead to settlement, the parties should approach the administrative patent judge and discuss the matter. Then the administrative patent judge will then be in a position to make an informed decision on an ''opinion that an earlier decision on a preliminary motion would materially advance the resolution of the interference.'' Amending the rule, as proposed, will advance resolution of interferences where settlement is not likely, while at the same time giving the parties a means by which to inform the administrative patent judge that a decision on a particular motion would assist the settlement process.

One comment suggested that the proposed language could be clarified by changing ''a decision'' (first occurrence) to ''an earlier decision'' so that the sentence reads: ''Unless an administrative patent judge or the Board is of the opinion that an earlier decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion shall be deferred to final hearing.'' The suggestion is being adopted.

Another comment stated that the second sentence of § 1.640(b) as proposed to be revised (''Motions otherwise will be decided by an administrative patent judge.'') is somewhat confusing and asks whether it is intended to mean that if the administrative patent judge decides not to defer a motion to final hearing, the administrative patent judge will then decide the motion. Any possible

ambiguity is avoided by changing ''otherwise'' to ''not deferred to final hearing.''

Although not proposed in the Notice of Proposed Rulemaking, the sentence in § 1.640(b) which currently reads ''[a]n administrative patent judge may consult with an examiner in deciding motions involving a question of patentability'' is changed to ''[a]n administrative patent judge may consult with an examiner in deciding motions'' to avoid any uncertainty that the administrative patent judge is free to consult with an examiner on any preliminary motion.

Still another comment suggested that the fourth sentence of § 1.640(b) as proposed to be revised (''An administrative patent judge may take up motions for decision in any order and may grant or deny any motion or take such other action which will secure the just, speedy, and inexpensive determination of the interference.'') be changed to read as follows to make it clear that the goal of ensuring a just, speedy, and inexpensive determination of the interference applies to the choice of order of deciding motions: ''An administrative patent judge may take up motions for decision in any order, may grant or deny any motion, and may take such other action which will secure the just, speedy, and inexpensive determination of the interference.'' The suggestion is being adopted. The rule is also revised to make absolutely clear that, among other things, an administrative patent judge may dismiss a motion, e.g., when a motion does not comply with a rule. The addition of the possibility of ''dismissing'' a motion augments the sanction available under § 1.618(a), i.e., return of a paper.

One comment suggested adding a provision to § 1.640(b) specifically recognizing the authority of the administrative patent judge, for the purpose of promoting the just, speedy and inexpensive resolution of the interference, ''to schedule a final hearing on deferred preliminary motions prior to the time of testimony on priority, etc. See also § 1.654(a).'' The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The suggestion will be considered in a future rulemaking effort, although it should be noted that nothing in the rules should be construed as precluding an administrative patent judge or the Board from ordering a ''final'' hearing on a particular issue. Whether such a ''final hearing'' is ordered is within the sound discretion of the administrative patent judge or the Board.

As proposed in the Notice of Proposed Rulemaking, § 1.640(b) is also revised to state that ''[a] matter raised by a party in support of, or in opposition to, a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing.'' one comment questioned whether it will be sufficient to simply incorporate the deferred motion and reply into the brief. The answer is no. With the exception of a motion to suppress, which may be filed as a separate paper together with a party's brief (§ 1.656(h)), and papers properly belatedly filed after the brief has been filed, the brief must satisfy the requirements of § 1.656(b) with respect to all issues to be decided at final hearing, including the requirement for a statement of the issue (§ 1.656(b)(4)), a statement of the relevant facts (§ 1.6565(b)(5)), and an argument (§ 1.656(b)(6)). It will be noted at this point, that the Board generally discourages the practice of incorporating an argument in one paper into a second paper. The reason is that the argument in the first paper can easily be overlooked in considering the second paper, i.e., when an administrative patent judge studies a motion, opposition, or reply at home only to find that the ''incorporated paper'' is not available.

As proposed in the Notice of Proposed Rulemaking, § 1.640(b) is revised to state that ''[i]f the administrative patent judge determines that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions on motions or on matters raised sua sponte by the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred motions that the party wishes to have considered at final hearing.'' One comment questioned why the statement of matters to be reviewed at final hearing is limited to final hearings on ''priority or derivation.'' The reason is that final hearings on priority and/or derivation are the only types of final hearing that will be scheduled pursuant to § 1.640(b). Final hearings that are requested in response to show cause orders under § 1.640(d) are set pursuant to § 1.640(e), which, as amended likewise requires statements identifying the matters to be reviewed at final hearing.

Section 1.640(b) was also proposed to be revised by adding as the last sentence: ''Any evidence that a party wishes to have considered with respect to the decisions and motions identified by the party or by an opponent for consideration or review at final hearing, including any affidavit filed by the party under § 1.608 or 1.639(b), shall be served on the opponent during the testimony-in-chief period of the party.'' In order to consistent with the terminology in the preceding sentence of § 1.640(b), the phrase ''decisions and motions'' in the proposed last sentence is replaced by ''decisions and deferred motions.'' Furthermore, the last sentence, as adopted, has been worded to take into account the retention and amendment of § 1.671(e) to permit a party to file a notice of intent to rely on affidavits, patents and printed publications previously submitted under § 1.639(b). Accordingly, the last sentence, as adopted, reads: ''Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified by the party or by an opponent for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony-in-chief period of the party.''

As proposed in the Notice of Proposed Rulemaking, the last sentence of § 1.640(b)(1) (''After the time expires for filing any amendment and supplemental preliminary statement, the examiner-in-chief will, if necessary, redeclare the interference.'') is changed to read: ''At an appropriate time in the interference, and when necessary, an order will be entered redeclaring the interference.'' One comment requested clarification of the meaning of ''when necessary'' and suggested that redeclaration should be required when the order of parties is changed but the count remains the same, in order to make it clear who is junior and who is senior. The suggestion, which included no specific language for its implementation and is outside the scope of the present rulemaking, is not being adopted. It will be considered in future rulemaking effort.

Section 1.640(b)(2), which currently states that a preliminary motion filed after a decision is entered on preliminary motions under § 1.633 will not be considered except as provided by § 1.655(b), is revised to state that a preliminary motion filed after the time expires for filing preliminary motions will not be considered except as provided by § 1.645(b) by changing ''1.655(b)'' to ''1.645(b).'' Section 1.645(b) relates to consideration of belatedly filed papers in general.

The Notice of Proposed Rulemaking proposed to amend § 1.640(c), which currently requires an administrative patent judge or the Board to specifically

authorize an opposition to a request for reconsideration of a decision by an administrative patent judge, to authorize an opponent to file an opposition, thereby saving the administrative patent judge or the Board the time it would otherwise take to determine whether to authorize an opposition. An opposition is normally required before the Board will modify the decision of an administrative patent judge. One comment suggested that because the Board frequently dismisses or denies requests for reconsideration without requesting an opposition, the proposed amendment will have the effect of unnecessarily increasing costs by encouraging the filing of oppositions that the Board may frequently find unnecessary to consider. The point is well taken and the proposal to amend § 1.640(c) to authorize oppositions to be filed without leave of the administrative patent judge is therefore withdrawn.

As proposed in the Notice of Proposed Rulemaking, the last sentence of § 1.640(c) is removed in order to authorize a single individual administrative patent judge to decide a request for reconsideration and is also revised to require that a request for reconsideration by filed by hand or Express Mail. The amendment of the rule should not be construed as limiting the authority of the Board, in the discretion of an administrative patent judge or the Board, to decide a request for reconsideration.

One comment suggested amending the second sentence of § 1.640(c) to permit service by next-business-day courier, arguing that hand delivery is often impractical and Express Mail unduly difficult. The comment also suggested that paragraph (c) be revised to allow reconsideration of a decision on motions, which is currently limited to identifying points that have been ''misapprehended or overlooked,'' on the additional ground that the decision is simply wrong on the merits, noting that decisions on reconsideration in several interferences agreed that a decision is wrong on the merits, but refused to change it on the grounds that nothing was overlooked or misapprehended. Both of these suggestions are outside the scope of the present rulemaking and are not being adopted. However, pending a future rulemaking effort, the word ''served by hand'' in § 1.640(c) and elsewhere in the rules should be construed to include service by next-business-day courier. In using a next-business-day courier, a party is serving the paper by hand, the ''hand'' being the courier service. Hence, service by hand will be construed to include service by any commercial courier which performs a service essentially equivalent to the Express Mail service provided by the U.S. Postal Service. Pending further rulemaking, the date of service shall be the date of delivery to the courier.

Section 1.640(d)(1), which currently states that an order to show cause under that section may be based on a decision on a motion which is dispositive of the interference against a party as to any count, is revised, as proposed in the Notice of Proposed Rulemaking, to also include decisions on dispositive matters raised sua sponte by an administrative patent judge.

Section 1.640(e) is revised, as proposed, to incorporate the substance of the Notice of December 8, 1986, *published as* ''Interference Practice: Response to Order to Show Cause Under 37 CFR 1.640,'' 1074 Off. Gaz. Pat. Office 4 (Jan. 6, 1987), 1086 Off. Gaz. Pat. Office 282 (Jan. 5, 1988). Specifically, § 1.640(e), as amended, provides that where the order to show cause was issued under § 1.640(d)(1), the party may file a paper (i) requesting that final hearing be set to review the decision which is the basis for the order and identifying every other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing, or (ii) fully explaining why judgment should not be entered. Any opponent is permitted to file a response to the paper within 20 days of the date of service of the paper. Where the order was issued under § 1.640(d)(1), and the paper includes a request for final hearing, the opponent's response must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. Where the order was issued under § 1.640(d)(1) and the paper does not include a request for final hearing, the opponent's response may include a request for final hearing which must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. Where an opponent's response includes a request for a final hearing, the party who filed the paper shall have 14 days from the date of service of the opponent's response in which to file a supplemental paper identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing. The paper or the response thereto shall be accompanied by a motion (§ 1.635) requesting a testimony period if a party wishes to introduce any evidence to be considered at final hearing (§ 1.671), such as affidavits previously filed under § 1.639(b). A request for a testimony period will be construed as including a request for final hearing. If the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing, the decision that in the basis for the order shall be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board shall enter judgment against the party against whom the order issued.

One comment suggested that in view of the proposed addition to § 1.640(b) to create a presumption of deferral of nondispositive preliminary motions, a provision should be added allowing the parties to request that the Board also consider deferred preliminary motions at a § 1.640(e) final hearing. The comment has merit and, while not being adopted specially at this time, will be made the subject of future rulemaking. In the interim, and consistent with the second sentence of § 1.601, the rules should be construed to give the administrative patent judge the maximum discretion to determine what issues might be considered at any final hearing set as a result of entry of an order to show cause.

One comment suggested that § 1.640(e)(1) be revised to automatically authorize the party who filed a paper in response to a § 1.640(d) show cause order to file a reply to an opponent's response in order to avoid the need for motions to file such replies. The suggestion is outside the scope of the present rulemaking and is not being adopted. Another comment suggested adding a provision to § 1.640(e) similar to the last sentence of proposed § 1.640(b) so that parties can include § 1.639 preliminary motion proofs in the record for consideration at a § 1.640(e) final hearing. The suggestion is being adopted. Accordingly, the penultimate sentence of § 1.640(e)(3), as adopted, reads: ''Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified by the party or by an opponent for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony period of the party.''

One comment suggested modifying the first sentence of proposed § 1.640(e)(4) (''If the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing * * *.'') by changing ''order and'' to read ''order, and if.'' The suggestion is being adopted.

Two comments suggested that interferences can be expedited and the costs reduced by amending the rules to formalize the procedure of having an administrative patent judge conduct a hearing after the filing of motions, oppositions and replies on issues that are potentially dispositive of the interference, as has been done on an experimental basis in several interferences. The comment indicates that such a procedure should reduce time and costs, encourage settlements, reduce issues, and help parties reach stipulations. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The suggestion will be the subject of future rulemaking. In the interim, there is nothing in the rules to preclude a party from requesting a hearing on a dispositive motion. Whether a hearing is conducted is a matter within the discretion of the administrative patent judge.

Section 1.641 currently provides that an administrative patent judge who becomes aware of a reason why a claim designated to correspond to a count may not be patentable should notify the parties of the reason and set a time within which each party may present its views. After considering the views, the administrative patent judge determines how the interference shall proceed. The Notice of Proposed Rulemaking proposed to amend § 1.641 to state that a party's views ''may include argument or appropriate preliminary motions under § 1.633 (c), (d) or (h), including any supporting evidence.'' After the Notice of Proposed Rulemaking was published it became apparent that the proposed language is ambiguous as to (1) whether evidence can be submitted in support of argument as well as in support of appropriate motions and (2) as to whether a party who agrees with the administrative patent judge's determination of unpatentability is entitled to file motions under §§ 1.633 (c), (d) and (h). These possible ambiguities are avoided by amending the rule to state that a party's views may include argument, including any supporting evidence, and in the case of the party whose claim may be unpatentable, may also include one or more appropriate preliminary motions under §§ 1.633 (c), (d) and (h), including any supporting evidence. The Notice of Proposed Rulemaking also proposed amending § 1.641 to state that ''[a]fter considering any timely filed views, including any timely filed preliminary motions under § 1.633, the administrative patent judge shall decide how the interference shall proceed.'' Inasmuch as the proposed language fails to take into account any oppositions and replies for the motions, the rule is instead revised to read: ''After considering any timely filed views, including any timely filed preliminary motions under § 1.633, oppositions and replies, the administrative patent judge shall decide how the interference shall proceed.''

One comment responded to the proposed amendments of § 1.641 as follows:

> The action taken by an administrative patent judge under this rule should be described as, in effect, a section 1.633(a) motion by the administrative patent judge. The action should point out that any party disagreeing with the administrative patent judge should respond in the same fashion as it would in opposing a section 1.633(a) motion including the submission of all available evidence under rule 1.639. By taking action under this rule, an administrative patent judge* becomes the (or an) adversary to at least one party in the interference and therefore any decision on such a motion by an administrative patent judge should be deferred to final hearing and the administrative patent judge who took the action should not be a member of the panel at final hearing. Other possibilities would be to remand the matter to the primary examiner for his or her decision as to whether there is any merit to the purported ground of unpatentability. If the purported ground of unpatentability applies to the claims of a patent involved in the interference, the primary examiner could determine whether the purported ground of unpatentability is sufficient to institute a reexamination proceeding with respect to the patent. If the primary examiner's decision is adverse to one or more of the parties, that party or those parties would have the burden of showing that the primary examiner's decision was incorrect. Another possibility would be for the administrative patent judge to merely notice the issue and provide the parties with a period of time within which to submit a motion under section 1.633(a). If none of the parties submits a section 1.633(a) motion and the administrative patent judge considers the matter to be of sufficient importance, he or she could then remand to the attention of the primary examiner for his or her decision as previously indicated.

The suggestion that § 1.641 be revised to characterize an administrative patent judge's determination that a party's claim may be unpatentable as, in effect, a § 1.633(a) motion is not being adopted. Section 1.641, as proposed to be revised by the comment, could be construed as precluding an opponent who agrees with the determination from submitting argument and appropriate motions, including evidence, in support of the determination. The suggestion that the administrative patent judge who initially made the determination of unpatentability be precluded from serving as a member of the reviewing panel at final hearing is not adopted. Judges in various courts and judges in administrative proceedings routinely issue orders to show cause and consider views presented in response to those orders. In the case of a dispositive matter which results in the issuance of an order to show cause, the party receiving the order to show cause knows that in addition to the administrative patent judge issuing the order, at least two other administrative patent judges will consider the response. Moreover, it should be noted that resolving patentability in an interference and in ex parte proceedings is not the same. In ex parte examination of a patent application, the statute specifically contemplates an administrative appeal to the Board. 35 U.S.C. 134. In the case of interferences, the statute authorizes the Board, in the first instance, to make a patentability determination. 35 U.S.C. 135(a). Hence, the statute does not require that an administrative patent judge issuing an order to show cause not participate in ruling on the sufficiency of any response to the order. Efficient administration of interferences in PTO dictates that the administrative patent judge most likely to be familiar with the record participate in evaluating responses to orders to show cause.

Another comment suggested that a § 1.641 order authorizing views be identified in the rule as an order to show cause. The suggestion is not being adopted. If, after considering the parties' arguments, motions, oppositions and replies, the administrative patent judge concludes that all of the involved claims or one or both parties are unpatentable, the administrative patent judge may issue an order to show cause pursuant to § 1.640(d)(1) as amended, which expressly provides for a show cause order based on a decision on a matter raised sua sponte by an administrative patent judge.

Section 1.643(b) is revised, as proposed in the Notice of Proposed Rulemaking, for clarification and also to change ''ends of justice'' to ''interest of justice'' to be consistent with the language used in other interference rules, including §§ 1.628(a) and 1.687(c).

As proposed in the Notice of Proposed rulemaking, § 1.644(a) is revised by changing ''a panel consisting of more than one examiner-in-chief'' to ''the Board'' and paragraphs (a)(1), (b)

*Cf. *In re Van Geuns*, 20 USPQ2d 1291, 1295 (Fed. Cir. 1991)[:] ''[a]s in all *ex parte* cases, the entity adverse to Van Geuns is the PTO Commissioner.''

and (c) are revised by changing both occurrences of ''panel'' to ''Board.''

Section 1.644(a)(2) is revised by removing the statement concerning when parties are authorized to file a petition seeking to invoke the supervisory authority of the Commissioner. The times for filing petitions are set out in § 1.644(b).

Section 1.644(b) is revised to provide that a petition seeking to invoke the supervisory authority of the Commissioner shall not be filed prior to the party's brief for final hearing. Sections 1.644(a)(2) and (b) currently provide that such a petition shall not be filed ''prior to the decision of the Board awarding judgment.'' Since promulgation of the ''new'' rules, 49 FR 48416 (Dec. 12, 1984), *reprinted in* 1050 Off. Gaz. Pat. Office 385 (Jan. 29, 1985), there have been relatively few petitions filed in interference cases, particularly petitions seeking to invoke supervisory authority. Thus, a result sought to be achieved under the ''new'' rules has been, in fact, achieved, i.e., fewer petitions. Under the rules, there should be few, if any, petitions to invoke supervisory authority. Section 1.644(a)(1), which authorizes important questions to be certified to the Commissioner, should be sufficient in most cases to resolve questions of interpretation of the rules. Section 1.644(a)(2) provides a vehicle for rule interpretation in those cases where certification is declined by the administrative patent judge and there remains, at the time briefs are filed for final hearing, a need to resolve the interpretation. The time for filing a petition to invoke supervisory authority is believed to be more appropriate before the Board enters a final decision, as opposed to after entry of a final-decision—as required by current practice. Parties should not file petitions seeking to invoke supervisory authority in cases involving routine interlocutory orders which do not involve an interpretation of a rule. As noted in the notice of final rule:

> [a] final decision of the Board is reviewable in the U.S. Court of Appeals for the Federal Circuit or an appropriate U.S. district court. Any reviewing court can review all aspects of the decision including patentability, priority, and all relevant interlocutory orders, such as denials of discovery.

49 FR 48416, 48418 (Dec. 12, 1984), *reprinted in* 1050 Off. Gaz. Pat. Office 385, 387 (Jan. 29, 1985).

Section 1.644(b) is also revised, as proposed, by revising it to state that a petition under § 1.644(a) shall be considered timely it is filed simultaneously with a proper motion under §§ 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. In other words, a petition under § 1.644(a)(3) should seek waiver of a rule prospectively rather than retroactively. Parties should recognize that waiver of a rule is reserved for unusual circumstances. *Myers v. Feigelman*, 455 F.2d 596, 601, 172 USPQ 580, 584 (CCPA 1972) (waiver of rules on routine basis would defeat the purpose of the rules and substantially confuse interference practice). Nevertheless, since PTO cannot possibly contemplate all circumstances which can arise in interferences at the time a rule is promulgated, waiver of a rule may be entirely appropriate in unusual circumstances. By encouraging parties to file a petition when they know a rule must be waived, the opponent is put ion the best position to address the matter and take whatever action might be in the opponent's interest in the event a petition is granted. One the other hand, parties should not expect many petitions to be granted which seek to waive the rules.

The time for responding to a petition under § 1.644(a)(1) or (a)(2) is changed from (a) 15 to days (b) to 20 days. The time for responding to a petition under § 1.544(a)(3) is changed from (a) 15 days to (b) 20 days or the date an opposition is due to the accompanying motion, whichever is earlier. The change will permit an opponent to file an opposition to the motion and the petition on the same day and should eliminate different, but related, time periods from running concurrently.

Section 1.644(b), as proposed, would have authorized the petition to be made part of the motion, as does § 1.644(b) in its current form. Upon reflection, since the petition is decided by one PTO official and the motion by another, it will be more efficient for PTO if the petition and motion are filed as separate papers. Additionally, the fact that a petition has been filed is less likely to be inadvertently overlooked if the petition and motion appear in separate papers.

In § 1.644(d), the second sentence, as proposed, is removed as unnecessary. The Notice of Proposed Rulemaking also proposed amending this paragraph to provide that the statement of facts in a petition preferably should be in numbered paragraphs. One comment suggested that numbered paragraphs be required, rather than just preferred. The suggestion is being adopted. Another comment suggested inserting a comma after ''Board'' in the second sentence of § 1.644(d), as proposed to be revised. The suggestion is being adopted.

As proposed in the Notice of Proposed Rulemaking, § 1.644(f) is revised to change the ''15 days'' in which to request reconsideration of a decision by the Commissioner to ''14 days.''

In § 1.644(g), the quotation marks around ''Express Mail'' are removed, as proposed.

Section 1.645(b), which in its current form permits consideration of a belatedly filed paper only if accompanied by a motion under § 1.635 showing sufficient cause (§ 1.645(b)) for the belatedness, is revised in several respects, as proposed in the Notice of Proposed Rulemaking. First, ''sufficient cause'' is changed to ''good cause'' in order to provide a single ''clause'' standard throughout the interference rules. Second, paragraph (b) is revised to permit consideration of a belatedly filed paper if an administrative patent judge or the Board sua sponte, is of the opinion that it would be in the interest of justice to consider the paper. An example would be where the delay is short (e.g., one day) and there is no prejudice to an opponent or where all parties and the Board act as though a paper is timely only to discover later that it was not. For purposes of sections other than § 1.645, a belatedly filed paper is considered ''timely filed'' if accompanied by a motion under § 1.635 to excuse the belatedness, which is granted.

Section 1.645(d) is revised, as proposed, by deleting ''In an appropriate circumstance'' as superfluous in view of the language ''may stay proceedings,'' which indicates that the administrative patent judge has the discretion to stay an interference.

Section 1.646 is revised in the manner proposed in the Notice of Proposed Rulemaking. Specifically, § 1.646(a)(2) is revised by deleting the reference to § 1.684, which is removed. Section 1.646(c)(1) is revised by inserting ''or causing a copy of the paper to be handed'' after ''By handing a copy of the paper'' to make it clear that the paper need not be personally delivered by the party, i.e., that delivery by hand can be effected by a commercial courier is used, it should be understood that the party normally will deliver the paper to the courier on one day and the paper will be delivered to the office of counsel for the opponent on the next day. A certificate of service that states that the paper is being served ''via the following commercial courier'' [insert name]'' is deemed to be a proper service within the meaning of § 1.646(c)(1), as amended. Pending further rulemaking, the date of service will be considered

the date the paper is delivered to the courier.

In § 1.646(c)(4), ''mail'' ''(second occurrence)'' is changed to ''first class mail'' to make it clear that the service date specified in that paragraph applies only to first class mail.

Section 1.646(c)(5) is redesignated as § 1.646(c)(6) and a new § 1.646(c)(5) is added which explains that a party may serve by Express Mail and that when service is effected by Express Mail, the date of service is considered to be the date of deposit with the U.S. Postal Service.

Section 1.646(d) is revised by removing the quotation marks around ''Express Mail.''

Section 1.646(e) is revised to state that the due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office.

One comment suggested amending § 1.646 to authorize service by next-business-day courier, with the date of service being the day the paper is given to the courier. The suggestion is not being adopted at this time, but will be considered in future rulemaking. In the interim, for the reasons given above, service by a next-business-day courier may be regarded as service by hand.

Section 1.651(a)(2) is revised, as proposed, by removing ''(testimony includes testimony to be taken abroad under § 1.684)'' in order to be consistent with the proposal to remove and reserve § 1.684 and by amending §§ 1.651 (c)(2) and (c)(3) to be consistent with the amendment to the definition of ''effective filing date'' in § 1.601(g).

The Notice of Proposed Rulemaking proposed further amending § 1.651(d) by changing ''abroad under § 1.684'' to ''in a foreign country.'' One comment noted that the term ''foreign country'' is unduly restrictive in that it does not include a foreign place that is not part of a ''country'' and suggested that the phrase ''in a place outside the United States'' be used instead. The suggestion is being adopted.

Section 1.653(a) is revised as proposed in the Notice of Proposed Rulemaking. First, the references to certain paragraphs of § 1.672 are revised to reflect the redesignation of those paragraphs. Second, ''of fact'' in the clause ''agreed statements of fact under § 1.672(f)'' is removed, because agreed statements under § 1.672(f), redesignated as § 1.672(h), can set forth either (1) how a particular witness would testify if called or (2) the facts in the case of one or more of the parties. Third, ''under § 1.684(c)'' is removed in view of the removal of § 1.684. Fourth, § 1.653(a) is revised to indicate that in addition to the types of testimony already set forth therein, testimony includes copies of written interrogatories and answers and written requests for admissions and answers, which might be obtained where a motion for additional discovery under § 1.687(c) is granted.

One comment suggested deleting ''transcripts of interrogatories, cross interrogatories, and recorded answers'' on the ground that this language is from § 1.684, which is removed. The suggestion is not being adopted, since there may be occasions when such testimony would be appropriate and authorized by an administrative patent judge or the Board.

Another comment suggested amending § 1.653 to provide that a party's record can include copies of videotapes of depositions and inter partes tests (in addition to the transcripts of the depositions), citing disparate treatment of this matter said to be occurring with different administrative patent judges. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The matter of videotapes and other forms of proof will be considered in a future rulemaking effort.

As proposed in the Notice of Proposed Rulemaking, § 1.653(b) is revised to be consistent with the redesignation of certain paragraphs of § 1.672 and to remove the reference to § 1.684(c), which is removed. Section 1.653(b) is also revised for clarity, while §§ 1.653(c) (1) and (4) are revised to make it clear that the only testimony to be included in a party's record is testimony submitted on behalf of the party. Having copies of the same testimony appear in both parties' records unnecessarily encumbers the records and is confusing in that a given page of testimony will have different page numbers in the different records, with the result that the briefs of the parties will refer to different record pages for the same testimony.

One comment suggested that either § 1.653(b) or § 1.672(h) be revised to specify when an ''an original agreed statement under § 1.672(h)'' is to be filed, since the due date for filing such a statement is not provided in the current rules. The suggestion is outside the scope of the current rulemaking and is not being adopted. In the interim, parties should plan on filing an agreed statement as soon as practical after it is agreed to, but an administrative patent judge shall have discretion to accept the agreed statement at any reasonable time.

Section 1.653(c)(5), which currently requires that the record filed by each party include each notice, official record and printed publication relied upon by the party and filed under § 1.682(a), is removed and reserved, as proposed. The requirement is unnecessary because notices, official records and printed publications are in the nature of exhibits under § 1.653(i), which are submitted with but not included in the record. The inclusion of exhibits in the record merely increases the size of the record without serving any useful purpose.

As proposed in the Notice of Proposed Rulemaking, § 1.653(g) is revised, and §§ 1.653 (f) and (h) removed and reserved, to eliminate the current distinction between typewritten and printed records. Specifically, § 1.653(g) is revised by changing ''8½ x 11 inches (21.8 by 27.9 cm.)'' to ''21.8 by 27.9 cm. (8½ x 11 inches)'' in order to emphasize the metric dimension, by removing the requirement for justified margins, by requiring that the records be bound with covers at their left edges in such manner as to lie flat when open to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested) and by requiring that when there is more than one volume, the numbers of the pages contained in each volume must appear at the top of the cover for each volume. Section 1.653(i) is revised, as proposed, to state that exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions as well as official records and publications submitted pursuant to § 1.682(a).

Section 1.654(a) is revised, as proposed, by changing ''shall'' in the second sentence to ''may'' for clarity and also to reduce the time for oral argument by a party from 60 minutes to 30 minutes. Most hearings require no more than 30 minutes per side. A panel hearing oral argument retains discretion to grant more time at a hearing.

The Notice of Proposed Rulemaking proposed amending § 1.655(a) to state that the standard of review for interlocutory orders is ''an abuse of discretion'' rather than ''erroneous or an abuse of discretion.'' As explained in the Notice of Proposed Rulemaking, the recitation of a separatee ''error'' standard is believed to be superfluous, because legal error is one of the alternative bases for finding an abuse of discretion. Specifically, an abuse of discretion may be found when (1) the decision of an administrative patent judge is clearly unreasonable, arbitrary or fanciful, (2) the decision is based on an erroneous conclusion of law, (3) the findings of the administrative patent judge are clearly erroneous, or (4) the record contains no evidence upon which the administrative patent judge rationally could have based the

decision. *Compare, e.g., Heat and Control, Inc. v. Hester Industries, Inc.*, 785 F.2d 1017, 1022, 228 USPQ 926, 930 (Fed. Cir. 1986); *Western Electric Co. v. Piezo Technology, Inc. v. Quigg*, 860 F.2d 428, 430–31, 8 USPQ2d 1853, 1855 (Fed. Cir. 1988); *Abrutyn v. Giovanniello*, 15 F.3d 1048, 1050–51, 29 USPQ2d 1615, 1617 (Fed. Cir. 1994), all of which define the phrase ''abuse of discretion.'' One comment stated that the rule, as proposed to be amended, in effect raises the standard of review because ''abuse of discretion'' includes ''clear error'' but not mere ''error.'' In view of the above-cited Federal Circuit decisions, it is believed that the statement in the comment is not correct.

One comment suggested inserting a comma after ''correct'' in penultimate sentence of § 1.655(a).'' The suggestion is being adopted.

Section 1.655(b) is revised to clarify the language concerning matters that a party is not entitled to raise for consideration at final hearing. Specifically, § 1.655(b), as amended, provides that a party shall not be entitled to raise for consideration at final hearing any matter which properly could have been raised by a motion under § 1.633 or 1.634 unless (1) The matter was properly raised in a motion that was timely filed by the party under § 1.633 or 1.634 and the motion was denied or deferred to final hearing, (2) the matter was properly raised by the party in a timely filed opposition to a motion under § 1.633 or 1.634 and the motion was granted over the opposition or deferred to final hearing, or (3) the party shows good cause why the issue was not properly raised by a timely filed motion or opposition. It was proposed in the Notice of Proposed Rulemaking to amend § 1.655(b) to state that ''[a] change of attorneys during the interference generally does not constitute good cause.'' For the reasons already given, it has been decided not to adopt the proposed amendment to § 1.655(b).

The Notice of Proposed Rulemaking also proposed to amend § 1.655(b) to create a rebuttable presumption that all claims of a party that are designated as corresponding to a count are directed to the same patentable invention for the purpose of determining unpatentability in view of prior art. The Federal Circuit had interpreted the former rule to suggest that the presumption applied only where a party's claim corresponded exactly to a count and was anticipated by prior art. *In re Van Geuns*, 988 F.2d 1181, 1185, 26 USPQ2d 1057, 1060 (Fed. Cir. 1993). The proposed revised rule would have made it clear that the rebuttable presumption applies to all claims that are designated as corresponding to the count, regardless of whether the count is anticipated by (§ 102) or would have been obvious view of (§ 103) the prior art. Specifically, the Notice of Proposed Rulemaking proposed adding the following sentence: ''A party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count may not subsequently argue to an administrative patent judge or the Board the separate patentability or lack of separate patentability of claims designated to correspond to the count.'' Comments were filed in opposition to the proposed amendment. One comment, for example, stated that the proposed amendment, as well as the accompanying commentary in the Notice of Proposed Rulemaking,

> falsely assumes that claims cannot be separately patentable merely because they have been designated as corresponding to the count, *i.e.,* merely because the claims are patentably indistinct from each other. The falsity of this proposition is apparent from the practice of the Patent and Trademark Office of designating as corresponding to the count both the patentable and unpatentable claims of a party.
>
> Two different comparisons are relevant: A party's claims with other claims of the party and the claims of a party with the prior art. The claims may be patentably indistinct *from each other* and, thus, provide no basis for a motion under § 1.633(c)(4), yet be separately patentable *over the prior art.*
>
> Accordingly, for example, a party should be able to respond to a motion for judgment on grounds of unpatentability over the prior art by arguing that *some,* but not necessarily all, of the designated claims are patentable over the prior art, even though the party had not previously moved to designate the separately patentable claims as not corresponding to the count. Indeed, it is entirely possible that no basis existed for making such a previous motion. The proposed amended rule, however, forecloses a party from responding to an attack on patentability of its claims by arguing that some, but not all, of the claims are patentable over the prior art.

(Emphasis in original.) The comment included several illustrative examples, including the following example said to be from actual interference:

> The count is directed to a broad generic class of compounds. While the compounds are useful herbicides, the count and corresponding claims are directed to compounds per se. The applications of both parties contain designated claims substantially corresponding to the count as well as claims directed to species falling within the count.
>
> The application of party A contains a designated claim directed specifically to a species with [sic; within] the genus that possesses ordinary activity for compounds of the claimed class; *i.e.,* the species compound is not separately patentable over the genus. Thus, the claim to the species is not patentable over the count if the count were prior art and is properly designated as corresponding to the count.
>
> Party B, during the motion period, moves for judgment under § 1.633(a) on the basis of a reference that is not prior art against party B, only against party A. That reference discloses a single compound falling squarely within the genus of the count * * *, but that is significantly different structurally from the species claimed in A's application. Furthermore, the reference does not indicate that the disclosed compound has herbicidal properties and it is shown in opposition to the motion for judgment that the compound, in fact, possesses virtually no herbicidal activity.
>
> Under this set of facts, the compound of the reference anticipates party A's claim that corresponds * * * [exactly] to the count. Nevertheless, the reference has no significance with regard to the patentability of the species claim in party A's application.
>
> In this particular case, the EIC [Examiner-in-Chief] had no difficulty in partially granting the motion for judgment against party A as to the generic claim, but denying the motion as to the species claim. The interference was continued with the count unchanged (because the reference was not prior art as to party B), with party A ultimately prevailing on the issue of priority. Thus, neither party received a generic claim, but party A ultimately obtained a species claim that was patentably indistinct from the genus of the count. Presumably under the new rules, party B would have retained all its claims while all of party A's claims would be found unpatentable.
>
> This case clearly illustrates that a claim that is patentably indistinct from the count and from a claim corresponding * * * [exactly] to the count (*i.e.,* a claim that cannot be designated as not corresponding to the count), nevertheless can be patentable over prior art that renders unpatentable a claim corresponding precisely to the count. This case also illustrates that failure to file a motion to designate certain claims as not corresponding to the count cannot be taken as a concession that all of the designated claims are unpatentable merely because the count (or a claim corresponding precisely to the count) is unpatentable over the prior art. Moreover, this situation is not an unusual one. It happens often in chemical cases, particularly chemical cases dealing with biologically active compounds.

Another comment questioned when a party that has failed to contest the designation of a claim as corresponding to a count would ever have occasion to later argue a *lack* of separate patentability.

The above comments are well taken. Accordingly, the proposal to amend § 1.655(b) to preclude a party from arguing separate patentability or a lack of separate patentability of claims over prior art in the absence of a § 1.633(c) motion is hereby withdrawn. Instead,

the rule is revised to read as follows: ''A party that fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count, or *fails to timely argue the separate patentability of a particular claim when the ground for unpatentability is first raised,* will not be permitted to later argue the separate patentability of that claim with respect to that ground.'' Thus, a party that fails to timely argue the separate patentability of a particular claim when the ground for unpatentability is first raised will not be permitted to later argue the separate patentability of that claim with respect to that ground. As noted in the comment, often the first opportunity to address patentability is in an opposition to a preliminary motion for judgment under § 1.633(a). In addition, inasmuch as a party filing a motion under § 1.633(a) must separately address each claim alleged to be unpatentable, the opponent will be in a position to know how to prepare an opposition, whereas under the current rules preparation of an opposition separately addressing each claim is not clearly required by the rules. The basic idea is that an opponent should have a fair opportunity to address the patentability of any of the opponent's claims when a patentability issue is first raised. Patentability can be raised, for example, by a preliminary motion under § 1.633(a) or sua sponte by an administrative patent judge. However, a party is not entitled to wait until the 11th hour in an interference to belatedly raise for the first time an issue of separate patentability of claims corresponding to a count.

As proposed in the Notice of Proposed Rulemaking, § 1.655(c) is revised by changing ''To prevent manifest injustice'' to ''In the interest of justice'' to be consistent with the language used in other interference rules.

Section 1.656 is revised, as proposed, by redesignating paragraphs (b)(1) through (b)(6) as paragraphs (b)(3) through (b)(8), respectively, and adding new paragraphs (b)(1) and (b)(2) requiring the brief to include (1) a statement of interest identifying every party represented by the attorney in the interference and the real party in interest if the party named in the caption is not the real party in interest and (2) a statement of related cases indicating whether the interference was previously before the Board for final hearing and identifying any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference. Appeals are mentioned because there have been numerous situations where related issues have been present before the Board simultaneously or sequentially in an ex parte appeal and an interference and vice versa. It was also proposed to amend current paragraph (b)(3), redesignated as paragraph (b)(5), to specify that statements of fact preferably should be presented in numbered paragraphs. One comment suggested that numbered paragraphs be required. The suggestion is being adopted.

As explained in the Notice of Proposed Rulemaking, § 1.656(b)(4), which is redesignated as § 1.656(b)(6), requires that the opening brief of the junior party contain the contentions of the party with respect to the ''issues to be decided,'' which has been construed to include the matter of whether some of the senior party's evidence of conception was inadmissible hearsay. *Suh* v. *Hoefle,* 23 USPQ2d 1321, 1323 (Bd. Pat. App. & Int. 1991). As support, the Board in *Suh* relied on *Fisher* v. *Bouzard,* 3 USPQ2d 1677 (Bd. Pat. App. & Int. 1987), and *Moller* v. *Harding,* 214 USPQ 730 (Bd. Pat. Int. 1982). Both of these cases concern interferences declared under the ''old'' interferences rules (i.e., § 1.201 *et seq.*), of which § 1.254 specified that the opening brief of the junior party shall ''present a full, fair statement of the questions involved, including his position with respect to the priority evidence on behalf of other parties.'' Current § 1.656(b)(4) does not expressly require, and was not intended to imply, that the opening brief of the junior party must address the evidence of any other party with respect to the issue of priority or any other issue. In order to clarify that the opening brief of a junior party need not address the evidence of the other parties, § 1.656(b)(6), as adopted, is revised to require only that the junior party's opening brief contain the contentions of the party ''with respect to the issues it is raising for consideration at final hearing.'' These issues would include the junior party's case-in-chief for priority with respect to an opponent or derivation by an opponent as well as matters raised in any denied or deferred motions of the junior party that are to be reviewed or considered at final hearing. Where the reply brief of the junior party is believed to include a new argument in response to the case-in-chief of the senior party as presented in the senior party's opening brief, the senior party may move under § 1.635 for leave to file a reply to the junior party's reply brief. The motion must be accompanied by a copy of the senior party's reply.

Section § 1.656(d) is revised, as proposed, to state that unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding. As a result, the current distinctions between printed and typewritten briefs are eliminated. Recent briefs filed in interference cases have been fairly long, e.g., 150 pages. The parties should make every effort to file briefs which, to borrow the words in one section of the patent statute, 35 U.S.C. 112, are ''full, clear, concise, and exact.'' Consideration will be given in a future rulemaking effort as to whether it might be appropriate to require a party to submit both (1) Findings of fact and conclusions of law and (2) a brief, wherein it might be presumed that the reader of the brief is familiar with the proposed findings/conclusions. So that members of the bar practicing before the Board in interference cases can be apprised of how briefs are used at the Board, the following comments are made. Briefs serve two purposes. First, briefs enable all three panel members to prepare for oral argument. During the time a member prepares for oral argument, often there is not time to become fully familiar with the record, particularly where the brief is being read at a location outside PTO, e.g., home. Second, when an opinion is authored by one panel member and reviewed by the other two panel members, the brief serves as a road map during the necessarily more thorough and more complete review of the record. Whereas there may not be time to ''check'' the record during the preparation phase before oral argument, there is time to ''check'' the record during the opinion writing and review period. An effective brief, with or without proposed findings/conclusions, is one which permits the members of the Board to accomplish both purposes mentioned above.

In § 1.656, paragraphs (e), (g) and (h) are revised, as proposed, to require an original and four copies (currently an original and three copies are required) of each brief, any proposed findings of fact and conclusions of law, any motion under 37 CFR 1.635 to suppress evidence and any opposition to a motion to suppress evidence.

The Notice of Proposed Rulemaking proposed amending the third sentence of § 1.656(g) to read as follows: ''Any proposed findings of fact shall be in numbered paragraphs and supported by specific references to the record.'' One comment suggested that ''and supported'' be changed to ''and shall be supported.'' The suggestion is being adopted.

Section 1.656(h) is revised, as proposed, to state that a party's failure to challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) constitutes a waiver of the right to move under § 1.656(h) to suppress the evidence on that ground at final hearing.

Section 1.656(i) currently provides that if a junior party fails to file an opening brief for final hearing, an order may be issued by the administrative patent judge requiring the junior party to show cause why the failure to file a brief should not be treated as a concession of priority, and further provides that judgment may be rendered against the junior party if the junior party ''fails to respond'' within a time period set in the order. The expression ''fails to respond'' has been misinterpreted by some junior parties as meaning that the mere filing of a response of any kind to the order to show cause should be sufficient to avoid the entry of judgment. Such an interpretation was not intended and, if adopted, would effectively nullify § 1.656(i). As proposed in the Notice of Proposed Rulemaking, ''respond'' is changed to ''show good cause'' to make it clear that a junior party's failure to file a timely opening brief will not be excused unless good cause is shown to explain or justify the failure to file a brief. The language of the rule will then be consistent with the other interference rules concerning orders to show cause, e.g., §§ 1.640(c) and 1.652.

Section 1.657 is revised, as proposed, to be consistent with the changes to the definition of ''effective filing date'' in § 1.601(g). As revised, § 1.657 will also state that in an interference involving an application and a patent where the effective filing date of the application is after the date the patent issued, a junior party has the burden of establishing priority by clear and convincing evidence. In other interferences the junior party has the burden of establishing priority by a preponderance of the evidence. The amendment codifies the holding of *Price* v. *Symsek*, 988 F.2d 1187, 1190–91, 26 USPQ2d 1031, 1033 (Fed. Cir. 1993), as clarified by *Bosies* v. *Benedict*, 27 F.3d 539, 541–42, 30 USPQ2d 1862, 1864 (Fed. Cir. 1994).

Section 1.658(a) is revised, as proposed, to state that when the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141–44, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed.

Section 1.658(b) is revised, as proposed, by removing the phrases ''[w]here reasonably possible'' and ''such that delivery is accomplished'' as unnecessary, so that the sentence as revised reads as follows: ''Service of the request for reconsideration shall be by hand or Express Mail.'' As proposed, a sentence is also added specifying that a decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–44, 146). Section 1.658(b) is further revised, as proposed, by changing ''reply to a request for reconsideration'' to ''opposition to a request for reconsideration'' in order to be consistent with the terminology employed in § 1.640(c), which concerns requests for reconsideration of decisions on preliminary motions.

One comment suggested amending § 1.658(b) to permit service of requests for reconsideration by next-business-day commercial courier. The suggestion is not being adopted at this time, but will be the subject of a future rulemaking effort. In the interim, see the discussion above concerning the interpretation to be given the phrase ''service * * * by hand.''

As proposed in the Notice of Proposed Rulemaking, § 1.660 has been revised by adding a new paragraph (e) explaining that the failure of a party to comply with the notice provisions of § 1.660 may result in sanctions under § 1.616 and that knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the reexamination, application for reissue, protest, or litigation shall not be sufficient. It was also proposed to provide that the notice contemplated by this section is notice addressed specifically to an administrative patent judge or the Board. One comment suggested that rather than requiring the notice to be ''addressed specifically to an administrative patent judge or the Board,'' the rule requires that it be ''addressed to the administrative patent judge in charge of the interference in which the application or patent is involved.'' The suggestion is being adopted.

Section 1.662(a) is revised, as proposed, by changing ''filing by an applicant or patentee'' in the second sentence to ''filing by a party'' to make it clear that a request for adverse judgment, including a written disclaimer of the invention defined by a count, a concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count and abandonment of the contest as to a count, can be signed by the party's attorney or agent of record. For the same reason, in the third sentence of paragraph (a), which concerns abandonment of an involved application ''by an applicant'' is removed and ''applicant'' is revised to read ''application.''

In § 1.662(b), the first sentence is revised, as proposed, by changing ''omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference'' to read ''does not include a claim that corresponds to a count'' in order to make it clear that judgment may not be entered where the reissue application includes any claim that corresponds to a count, including a new or amended claim that should be designated as corresponding to the count. Similarly, ''reissue other than for the purpose of avoiding the interference'' is changed to ''reissue which includes a claim that corresponds to a count,'' which means corresponds to the count or should be designated to correspond to the count.

Section 1.674(a), which specifies before whom depositions may be taken, the reference to ''United States or a territory or insular possession of the United States'' is removed, as proposed, in order to make the paragraph applicable to depositions for testimony compelled in foreign countries.

Section 1.675(d), which concerns reading and signing of a transcript by the witness, is revised, as proposed, to take into account that the witness might refuse to read and/or sign the transcript of the deposition, in which case the circumstances under which the witness refused to sign must be noted on the certificate by the officer who prepared the certified transcript (§ 1.676(c)). One comment suggested that § 1.675 be revised to recognize the witness's right to make corrections to the transcript prior to signing, as in Fed. R. Civ. P. 30(e), second sentence. The suggestion, which is outside the scope of the present rulemaking, is not being adopted. The substance of the suggestion will be considered in a future rulemaking effort.

Section 1.676(a)(4) is revised, as proposed, by changing ''opposing party'' to ''opponent.''

Section 1.677(a), which in its current form specifies the required form for transcripts of depositions, is revised, as proposed, to also apply to affidavits, by removing the reference to ''typewritten'' matter, changing ''pica-type'' to ''11 point type,'' and changing ''8½x11 inches (21.8 by 27.9 cm.)'' to ''21.8 by 27.9 cm. (8½x11 inches).'' For the reasons given above in the discussion of a ''developing record,'' § 1.677(b), which concerns numbering of exhibits submitted with affidavits and deposition transcripts, is revised to change ''consecutively'' to ''consecutively to the extent possible.''

In § 1.678, the section heading is changed, as proposed, from ''Transcript of deposition must be filed'' to ''Time for filing transcript of deposition'' for clarity. The text is revised by changing the time for filing the certified transcript from 45 days to one month after the deposition.

Section 1.679 is revised as proposed by changing ''transcript'' to ''transcript of a deposition'' for clarity and ''for printing (§ 1.653(g))'' is removed as unnecessary.

In § 1.682, paragraph (a) is revised, as proposed, in the ''Miscellaneous Amendments'' part of the Notice of Proposed Rulemaking in the following respects. First, ''identified during the taking of testimony of a witness'' is changed to ''identified in an affidavit or on the record during an oral deposition of a witness'' for clarity. Second, § 1.682(a)(4) (''where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d))'') is removed and reserved as superfluous in view of Rules 901 and 902 of the Federal Rules of Evidence, which apply to interference proceedings (§ 1.671(b), and require authentication of evidence that is not self-authenticating. Third, the first word in each of paragraphs (a)(2), (a)(3) and (a)(4) is capitalized.

Section 1.685(d) is revised, as proposed, for clarification.

Section 1.687(c) is revised, as proposed, to refer to § 1.647 concerning translations of documents in a foreign language.

One comment stated that the lack of discovery available under § 1.687(c) has prevented some interferences from reaching the ''correct'' result. According to the comment, a different result might have been reached if the discovery available under the Federal Rules of Civil Procedure had been allowed. The comment suggests that PTO consider authorizing discovery similar to the Fed. R. Civ. P. in interferences. The suggestion, which is outside the scope of the present rulemaking, is not being adopted.

In § 1.690(a), ''37 CFR, Subpart E of Part 1'' is revised to read ''this subpart.''

Other Considerations

These rules conform with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Order 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget has determined that these rule changes are not significant for the purposes of Executive Order 12866.

The Assistant Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the changes clarify existing rules setting forth the procedures used in patent appeals and interferences.

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

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out in the preamble, part 1 of title 37 of the Code of Federal Regulations is amended as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citations for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 6 and 23, unless otherwise noted.

2. Section 1.11(e) is revised to read as follows:

§ 1.11 Files open to the public.

* * * * *

(e) The file of any interference involving a patent, a statutory invention registration, a reissue application, or an application on which a patent has been issued or which has been published as a statutory invention registration, is open to inspection by the public, and copies may be obtained upon paying the fee therefor, if:

(1) The interference has terminated or

(2) An award of priority or judgment has been entered as to all parties and all counts.

3. In § 1.192, paragraphs (c)(1) through (c)(7) are redesignated as paragraphs (c)(3) through (c)(9); paragraphs (a), (c) introductory text, newly designated paragraphs (c)(7), (c)(8) introductory text, and (c)(8)(v), and (d) are revised; and paragraphs (c)(1) and (c)(2) are added to read follows:

§ 1.192 Appellant's brief.

(a) Appellant shall, within 2 months from the date of the notice of appeal under § 1.191 or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of patent Appeals and Interferences, unless good cause is shown.

* * * * *

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

(1) *Real party in interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) *Related appeals and interferences.* A Statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

* * * * *

(7) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is

not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

* * * * *

(v) For any rejection other than those referred to in paragraphs (c)(8) (i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

* * * * *

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

4. Section 1.601 is amended by revising paragraphs (f), (g), (j), (k), (l), (m), (n), and (q) and adding new paragraphs (r) and (s) to read as follows:

§ 1.601 Scope of rules, definitions.

* * * * *

(f) A *count* defines the interfering subject matter between two or more applications or between one or more applications and one or more patents. At the time the interference is initially declared, a count should be broad enough to encompass all of the claims that are patentable over the prior art and designated to correspond to the count. When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent that is designated to correspond to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application that is designated to correspond to a count and is identical to the count is said to correspond exactly to the count. A claim of a patent or application that is designated to correspond to a count but is not identical to the count is said to correspond substantially to the count. When a count is broader in scope than all claims which correspond to the count, the count is a phantom count.

(g) The *effective filing date* of an application is the filing date of an earlier application, benefit of which is accorded to the application under 35 U.S.C. 119, 120, 121, or 365 or, if no benefit is accorded, the filing date of the application. The effective filing date of a patent is the filing date of an earlier application, benefit of which is accorded to the patent under 35 U.S.C. 119, 120, 121, or 365 or, if no benefit is accorded, the filing date of the application which issued as the patent.

* * * * *

(j) An *interference-in-fact* exists when at least one claim of a party that is designated to correspond to a count and at least one claim of an opponent that is designated to correspond to the count define the same patentable invention.

(k) A *lead* attorney or agent is a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the attorney or agent whom an administrative patent judge may contact to set times and take other action in the interference.

(l) A *party* is an applicant or patentee involved in the interference or a legal representative or an assignee of record in the Patent and Trademark Office of an applicant or patentee involved in an interference. Where acts of party are normally performed by an attorney or agent, ''party'' may be construed to mean the attorney or agent. An inventor is the individual named as inventor in an application involved in an interference or the individual named as inventor in a patent involved in an interference.

(m) A *senior party* is the party with the earliest effective filing date as to all counts or, if there is no party with the earliest effective filing date as to all counts, the party with the earliest filing date. A *junior party* is any other party.

(n) Invention ''A'' is the *same patentable invention* as an invention ''B'' when invention ''A'' is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention ''B'' assuming invention ''B'' is prior art with respect to invention ''A''. Invention ''A'' is a *separate patentable invention* with respect to invention ''B'' when invention ''A'' is new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103) in view of invention ''B'' assuming invention ''B'' is prior art with respect to invention ''A''.

* * * * *

(q) A *final decision* is a decision awarding judgment as to all counts. An *interlocutory order* is any other action taken by an administrative patent judge or the Board in an interference, including the notice declaring an interference.

(r) *NAFTA country* means NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2060 (19 U.S.C. 3301).

(s) *WTO member country* means WTO member country as defined in section 2(10) of the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4813 (19 U.S.C. 3501).

5. Section 1.602 is amended by revising paragraph (c) to read as follows:

§ 1.602 Interest in applications and patents involved in an interference.

* * * * *

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 20 days after the change.

6. Section 1.603 is revised to read as follows:

§ 1.603 Interference between applications; subject matter of the interference.

Before an interference is declared between two or more applications, the examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each application must contain, or be amended to contain, at least one claim that is patentable over the prior art and corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count.

7. Section 1.604(a)(1) is revised to read as follows:

§ 1.604 Request for interference between applications by an applicant.

(a) * * *

(1) Suggesting a proposed count and presenting at least one claim corresponding to the proposed count or identifying at least one claim in its application that corresponds to the proposed count,

* * * * *

8. Section 1.605(a) is revised to read as follows:

§ 1.605 Suggestion of claim to applicant by examiner.

(a) If no claim in an application is drawn to the same patentable invention claimed in another application or patent, the examiner may suggest that an applicant present a claim drawn to an invention claimed in another

application or patent for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the examiner, not less than one month. Failure or refusal of an applicant to timely present the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim. At the time the suggested claim is presented, the applicant may also call the examiner's attention to other claims already in the application or presented with the suggested claim and explain why the other claims would be more appropriate to be designated to correspond to a count in any interference which may be declared.

* * * * *

9. Section 1.606 is revised to read as follows:

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. The applications must contain, or be amended to contain, at least one claim that is patentable over the prior art and corresponds to each count. The claim in the application need not be, and most often will not be, identical to a claim in the patent. All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count. At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any application claim that is patentable over the prior art and designated to correspond to the count or any patent claim designated to correspond to the count. Any single patent claim designated to correspond to the count will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

10. Section 1.607 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(6) to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * *

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in its application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

* * * * *

(6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent.

11. Section 1.608 is revised to read as follows:

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the effective filing date of an application is three months or less after the effective filing date of a patent, before an interference will be declared, either the applicant or the applicant's attorney or agent of record shall file a statement alleging that there is a basis upon which the applicant is entitled to a judgment relative to the patentee.

(b) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant, before an interference will be declared, shall file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the effective filing date of the patent. To facilitate preparation of a record (§ 1.653(g)) for final hearing, an applicant should file affidavits on paper which is 21.8 by 27.9 cm. (8½ x 11 inches). The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of good cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

12. Section 1.609 is amended by revising paragraphs (b)(1), (b)(2) and (b)(3) to read as follows:

§ 1.609 Preparation of interference papers by examiner.

* * * * *

(b) * * *

(1) The proposed count or counts and, if there is more than one count proposed, explaining why the counts define different patentable inventions;

(2) The claims of any application or patent which correspond to each count, explaining why each claim designated as corresponding to a count is directed to the same patentable invention as the count;

(3) The claims in any application or patent which do not correspond to each count and explaining why each claim designated as not corresponding to any count is not directed to the same patentable invention as any count; and

* * * * *

13. Section 1.610 is revised to read as follows:

§ 1.610 Assignment of interference to administrative patent judge, time period for completing interference.

(a) Each interference will be declared by an administrative patent judge who may enter all interlocutory orders in the interference, except that only the Board shall hear oral argument at final hearing, enter a decision under §§ 1.617, 1.640(e), 1.652, 1.656(i) or 1.658, or enter any other order which terminates the interference.

(b) As necessary, another administrative patent judge may act in place of the one who declared the interference. At the discretion of the administrative patent judge assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the administrative patent judge assigned to the interference. Times for taking action shall be set and the administrative

patent judge shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d) An administrative patent judge may hold a conference with the parties to consider simplification of any issues, the necessity or desirability of amendments to counts, the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, any limitations on the number of expert witnesses, the time and place for conducting a deposition (§ 1.673(g)), and any other matter as may aid in the disposition of the interference. After a conference, the administrative patent judge may enter any order which may be appropriate.

(e) The administrative patent judge may determine a proper course of conduct in an interference for any situation not specifically covered by this part.

14. Section 1.611 is amended by redesignating paragraph (c)(8) as paragraph (c)(9); adding a new paragraph (c)(8); and revising paragraphs (b), (c)(6), (c)(7), and (d) to read as follows:

§ 1.611 Declaration of interference.

* * * * *

(b) When a notice of declaration is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an administrative patent judge may send a copy of the notice to a patentee named in a patent involved in an interference or the patentee's assignee of record in the Patent and Trademark Office or order publication of an appropriate notice in the *Official Gazette.*

(c) * * *

(6) The count or counts and, if there is more than one count, the examiner's explanation why the counts define different patentable inventions;

(7) The claim or claims of any application or any patent which correspond to each count;

(8) The examiner's explanation as to why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to any count is not directed to the same patentable invention as any count; and

* * * * *

(d) The notice of declaration may also specify the time for:

(1) Filing a preliminary statement as provided in § 1.621(a);

(2) Serving notice that a preliminary statement has been filed as provided in § 1.621(b); and

(3) Filing preliminary motions authorized by § 1.633.

* * * * *

15. Section 1.612 is amended by revising paragraph (a) to read as follows:

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608 filed separate from an amendment. A party seeking access to any abandoned or pending application referred to in the opponent's involved application or access to any pending application referred to in the opponent's patent must file a motion under § 1.635. See § 1.11(e) concerning public access to interference files.

* * * * *

16. Section 1.613 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.

* * * * *

(c) An administrative patent judge may make necessary inquiry to determine whether an attorney or agent should be disqualified from representing a party in an interference. If an administrative patent judge is of the opinion that an attorney or agent should be disqualified, the administrative patent judge shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

(d) No attorney or agent of record in an interference may withdraw as attorney or agent of record except with the approval of an administrative patent judge and after reasonable notice to the party on whose behalf the attorney or agent has appeared. A request to withdraw as attorney or agent of record in an interference shall be made by motion (§ 1.635).

17. Section 1.614 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.614 Jurisdiction over interference.

(a) The Board acquires jurisdiction over an interference when the interference is declared under § 1.611.

* * * * *

(c) The examiner shall have jurisdiction over any pending application until the interference is declared. An administrative patent judge may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.

18. Section 1.615 is revised to read as follows:

§ 1.615 Suspension of ex parte prosecution.

(a) When an interference is declared, ex parte prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application received during pendency of the interference will not be entered or considered in the interference without the consent of an administrative patent judge.

(b) Ex parte prosecution as to specified matters may be continued concurrently with the interference with the consent of the administrative patent judge.

19. Section 1.616 is revised to read as follows:

§ 1.616 Sanctions for failure to comply with rules or order or for taking and maintaining a frivolous position.

(a) An administrative patent judge or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an administrative patent judge or the Board. An appropriate sanction may include among others entry of an order:

(1) Holding certain facts to have been established in the interference;

(2) Precluding a party from filing a paper;

(3) Precluding a party from presenting or contesting a particular issue;

(4) Precluding a party from requesting, obtaining, or opposing discovery;

(5) Awarding compensatory expenses and/or compensatory attorney fees; or

(6) Granting judgment in the interference.

(b) An administrative patent judge or the Board may impose a sanction, including a sanction in the form of compensatory expenses and/or compensatory attorney fees, against a party for taking and maintaining a frivolous position in papers filed in the interference.

(c) To the extent that an administrative patent judge or the Board has authorized a party to compel the taking of testimony or the production of documents or things from an individual or entity located in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention (§ 1.671(h)), but the testimony, documents or things have

not been produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under paragraph (a) of this section.

(d) A party may file a motion (§ 1.635) for entry of an order imposing sanctions, the drawing of adverse inferences or other action under paragraph (a), (b) or (c) of this section. Where an administrative patent judge or the Board on its own initiative determines that a sanction, adverse inference or other action against a party may be appropriate under paragraph (a), (b) or (c) of this section, the administrative patent judge or the Board shall enter an order for the party to show cause why the sanction, adverse inference or other action is not appropriate. The Board shall take action in accordance with the order unless, within 20 days after the date of the order, the party files a paper which shows good cause why the sanction, adverse inference or other action would not be appropriate.

20. Section 1.617 is amended by revising paragraphs (a), (b), (d), (e), (g) and (h) to read as follows:

§ 1.617 Summary judgment against applicant.

(a) An administrative patent judge shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is *prima facie* entitled to a judgment relative to the patentee. If the administrative patent judge determines that the evidence shows the applicant is *prima facie* entitled to a judgment relative to the patentee, the interference shall proceed in the normal manner under the regulations of this part. If in the opinion of the administrative patent judge the evidence fails to show that the applicant is *prima facie* entitled to a judgment relative to the patentee, the administrative patent judge shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant may file a response to the order, which may include an appropriate preliminary motion under § 1.633 (c), (f) or (g), and state any reasons why summary judgment should not be entered. Any request by the applicant for a hearing before the Board shall be made in the response. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a response, the applicant shall serve a copy of any evidence filed under § 1.608(b) and this paragraph.

* * * * *

(d) If a response is timely filed by the applicant, all opponents may file a statement and may oppose any preliminary motion filed under § 1.633 (c), (f) or (g) by the applicant within a time set by the administrative patent judge. The statement may set forth views as to why summary judgment should be granted against the applicant, but the statement shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the administrative patent judge for issuing the order to show cause. Except as required to oppose a motion under § 1.633 (c), (f) or (g) by the applicant, evidence shall not be filed by any opponent. An opponent may not request a hearing.

(e) Within a time authorized by the administrative patent judge, an applicant may file a reply to any statement or opposition filed by any opponent.

* * * * *

(g) If a response by the applicant is timely filed, the administrative patent judge or the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under paragraphs (b) and (e) of this section shows that the applicant is *prima facie* entitled to a judgment relative to the patentee. If the applicant is not *prima facie* entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. Otherwise, an interlocutory order shall be entered authorizing the interference to proceed in the normal manner under the regulations of this subpart.

(h) Only an applicant who filed evidence under § 1.608(b) may request a hearing. If that applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The administrative patent judge shall set a date and time for the hearing. Unless otherwise ordered by the administrative patent judge or the Board, the applicant and any opponent will each be entitled to no more than 30 minutes of oral argument at the hearing.

21. Section 1.618 is amended by revising paragraph (a) to read as follows:

§ 1.618 Return of unauthorized papers.

(a) An administrative patent judge or the Board shall return to a party any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart. Any paper returned will not thereafter be considered in the interference. A party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an administrative patent judge or the Board.

* * * * *

22. Section 1.621 is amended by revising paragraph (b) to read as follows:

§ 1.621 Preliminary statement, time for filing, notice of filing.

* * * * *

(b) When a party files a preliminary statement, the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by the administrative patent judge.

23. Section 1.622 is amended by revising paragraph (b) to read as follows:

§ 1.622 Preliminary statement; who made invention; where invention made.

* * * * *

(b) The preliminary statement shall state whether the invention was made in the United States, a NAFTA country (and, if so, which NAFTA country), a WTO member country (and, if so, which WTO member country), or in a place other than the United States, a NAFTA country, or a WTO member country. If made in a place other than the United States, a NAFTA country, or a WTO member country, the preliminary statement shall state whether the party is entitled to the benefit of 35 U.S.C. 104(a)(2).

24. Section 1.623 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 1.623 Preliminary statement; invention made in United States, a NAFTA country, or a WTO member country.

(a) When the invention was made in the United States, a NAFTA country, or a WTO member country, or a party is entitled to the benefit of 35 U.S.C. 104(a)(2), the preliminary statement

must state the following facts as to the invention defined by each count:

* * * * *

25. Section 1.624 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 1.624 Preliminary statement; invention made in a place other than the United States, a NAFTA country, or a WTO member country.

(a) When the invention was made in a place other than the United States, a NAFTA country, or a WTO member country and a party intends to rely on introduction of the invention into the United States, a NAFTA country, or a WTO member country, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first introduced into the United States, a NAFTA country, or a WTO member country.

(2) The date on which a written description of the invention was first introduced into the United States, a NAFTA country, or a WTO member country.

(3) The date on which the invention was first disclosed to another person in the United States, a NAFTA country, or a WTO member country.

(4) The date on which the inventor's conception of the invention was first introduced into the United States, a NAFTA country, or a WTO member country.

(5) The date on which an actual reduction to practice of the invention was first introduced into the United States, a NAFTA country, or a WTO member country. If an actual reduction to practice of the invention was not introduced into the United States, a NAFTA country, or a WTO member country, the preliminary amendment shall so state.

(6) The date after introduction of the inventor's conception into the United States, a NAFTA country, or a WTO member country when active exercise of reasonable diligence in the United States, a NAFTA country, or a WTO member country toward reducing the invention to practice began.

* * * * *

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was introduced into the United States, a NAFTA country, or a WTO member country, a copy of that drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was introduced into the United States, a NAFTA country, or a WTO member country, a copy of that written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a copy of the first drawing or first written description introduced in the United States, a NAFTA country, or a WTO member country cannot be filed with the preliminary statement.

26. Section 1.625 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.625 Preliminary statement; derivation by an opponent.

(a) When a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

* * * * *

27. Section 1.626 is revised to read as follows:

§ 1.626 Preliminary statement; earlier application.

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier filed application to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier filed application with particularity.

28. Section 1.627(b) is revised to read as follows:

§ 1.627 Preliminary statement; sealing before filing, opening of statement.

* * * * *

(b) A preliminary statement may be opened only at the direction of an administrative patent judge.

29. Section 1.628 is revised to read as follows:

§ 1.628 Preliminary statement; correction of error.

(a) A material error arising through inadvertence or mistake in connection with a preliminary statement or drawings or a written description submitted therewith or omitted therefrom may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit stating the date the error was first discovered, shall be accompanied by the corrected statement and shall be filed as soon as practical after discovery of the error. If filed on or after the date set by the administrative patent judge for service of preliminary statements, the motion shall also show that correction of the error is essential to the interest of justice.

(b) When a party cannot attach a copy of a drawing or written description to the party's preliminary statement as required by § 1.623(c), § 1.624(c) or § 1.625(c), the party shall show good cause and explain in the preliminary statement why a copy of the drawing or written description cannot be attached to the preliminary statement and shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States, a NAFTA country, or a WTO member country which is available. The party shall file a motion (§ 1.635) to amend its preliminary statement promptly after the first drawing, first written description, or drawing or written description first introduced into the United States, a NAFTA country, or a WTO member country becomes available. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under § 1.687 or during a testimony period.

30. Section 1.629 is amended by revising paragraphs (a), (c) (1) and (d) to read as follows:

§ 1.629 Effect of preliminary statement.

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to definiteness or sufficiency of any allegation in a preliminary statement or compliance with formal requirements will be resolved against the party filing the statement by restricting the party to its effective filing date or to the latest date of a period alleged in the preliminary statement, as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

* * * * *

(c) * * *

(1) Shall be restricted to the party's effective filing date and

* * * * *

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the party's effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

* * * * *

31. Section 1.630 is revised to read as follows:

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier filed application unless the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or the party files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

32. Section 1.631(a) is revised to read as follows:

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an administrative patent judge, concurrently with entry of a decision on preliminary motions filed under § 1.633 any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the administrative patent judge, a party shall serve a copy of its preliminary statement on each opponent who served a notice under § 1.621(b.

* * * * *

33. Section 1.632 is revised to read as follows:

§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed, or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an administrative patent judge, a notice is timely when filed within ten (10) days after the close of the testimony-in-chief of the opponent.

34. Section 1.633 is amended by revising paragraphs (a), (b), (f), (g) and (i) to read as follows:

§ 1.633 Preliminary motions.

* * * * *

(a) A motion for judgment against an opponent's claim designated to correspond to a count on the ground that the claim is not patentable to the opponent. The motion shall separately address each claim alleged to be unpatentable. In deciding an issue raised in a motion filed under this paragraph (a), a claim will be construed in light of the specification of the application or patent in which it appears. A motion under this paragraph shall not be based on:

(1) Priority of invention by the moving party as against any opponent or

(2) Derivation of the invention by an opponent from the moving party. See § 1.637(a).

(b) A motion for judgment on the ground that there is no interference-in-fact. A motion under this paragraph is proper only if the interference involves a design application or patent or a plant application or patent or no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. See § 1.637(a). When claims of different parties are presented in ''means plus function'' format, it may be possible for the claims of the different parties not to define the same patentable invention even though the claims contain the same literal wording.

* * * * *

(f) A motion to be accorded the benefit of the filing date of an earlier filed application. See § 1.637(a) and (f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier filed application. See § 1.637(a) and (g).

* * * * *

(i) When a motion is filed under paragraph (a), (b), or (g) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section, a motion to substitute a different application under paragraph (d) of this section, or a motion to add a reissue application to the interference under paragraph (h) of this section.

* * * * *

35. Section 1.636 is revised to read as follows:

§ 1.636 Motions, time for filing.

(a) A preliminary motion under § 1.633(a) through (h) shall be filed within a time period set by an administrative patent judge.

(b) A preliminary motion under § 1.633(i) or (j) shall be filed within 20 days of the service of the preliminary motion under § 1.633(a), (b), (c)(1), or (g) unless otherwise ordered by an administrative patent judge.

(c) A motion under § 1.634 shall be diligently filed after an error is discovered in the inventorship of an application or patent involved in an interference unless otherwise ordered by an administrative patent judge.

(d) A motion under § 1.635 shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an administrative patent judge.

36. Section 1.637 is amended by revising paragraphs (a), (b), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(3)(ii), (c)(4)(ii), (d), introductory text, (e)(1)(viii), (e)(2)(vii), (f)(2), and (h), (4); removing paragraphs (c)(2)(iv), (c)(3)(iii), and (d) (4); and adding paragraphs (c)(1)(vii), (e)(1)(ix), and (e)(2)(viii) to read as follows:

§ 1.637 Content of motions.

(a) A party filing a motion has the burden of proof to show that it is entitled to the relief sought in the motion. Each motion shall include a statement of the precise relief requested, a statement of the material facts in support of the motion, in numbered paragraphs, and a full statement of the reasons why the relief requested should be granted. If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party.

(b) Unless otherwise ordered by an administrative patent judge or the Board, a motion under § 1.635 shall contain a certificate by the moving party stating that the moving party has conferred with all opponents in an effort in good faith to resolve by agreement the issues raised by the motion. The certificate shall indicate whether any opponent plans to oppose the motion. The provisions of this paragraph do not apply to a motion to suppress evidence (§ 1.656(h)).

(c) * * *

(1) * * *

(v) Show that each proposed count defines a separate patentable invention from every other count proposed to remain in the interference.

(vi) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier filed application, if benefit of the earlier filed application is desired with respect to a proposed count.

(vii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(2) * * *

(ii) Show that the claim proposed to be amended or added defines the same patentable invention as the count.

(iii) Show the patentability to the applicant of each claim proposed to be amended or added and apply the terms of the claim proposed to be amended or added to the disclosure of the application; when necessary a moving party applicant shall file with the motion a proposed amendment to the application amending the claim corresponding to the count or adding the proposed additional claim to the application.

(3) * * *

(ii) Show the claim defines the same patentable invention as another claim whose designation as corresponding to the count the moving party does not dispute.

(4) * * *

(ii) Show that the claim does not defined the same patentable invention as any other claim whose designation in the notice declaring the interference as corresponding to the count the party does not dispute.

* * * * *

(d) A preliminary motion under § 1.633(d) to substitute a different application of the moving party shall:

* * * * *

(e) * * *

(1) * * *

(viii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier filed application, if benefit is desired with respect to a proposed count.

(ix) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(2) * * *

(vii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier filed application, if benefit is desired with respect to a proposed count.

(viii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not also entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.

(f) * * *

(2) When an earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608, has been served on all opponents. When the earlier application is an application filed in a foreign country, certify that a copy of the application has been served on all opponents. If the earlier filed application is not in English, the requirements of § 1.647 must also be met.

* * * * *

(h) * * *

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier filed application, if benefit is desired.

37. Section 1.638 is revised to read as follows:

§ 1.638 Opposition and reply; time for filing opposition and reply.

(a) Unless otherwise ordered by an administrative patent judge, any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall identify any material fact set forth in the motion which is in dispute and include an argument why the relief requested in the motion should be denied.

(b) Unless otherwise ordered by an administrative patent judge, any reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

38. Section 1.639 is amended by revising paragraphs (a), (b), (c) and (d)(1) to read as follows:

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) Except as provided in paragraphs (c) through (g) of this section, proof of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

(b) Proof may be in the form of patents, printed publications, and affidavits. The pages of any affidavits filed under this paragraph shall, to the extent possible, be given sequential numbers, which shall also serve as the record page numbers for the affidavits in the event they are included in the party's record (§ 1.653). Any patents and printed publications submitted under this paragraph and any exhibits identified in affidavits submitted under this paragraph shall, to the extent possible, be given sequential exhibit numbers, which shall also serve as the exhibit numbers in the event the patents, printed publications and exhibits are filed with the party's record (§ 1.653).

(c) If a party believes that additional evidence in the form of testimony that is unavailable to the party is necessary to support or oppose a preliminary motion under § 1.633 or a motion to correct inventorship under § 1,634, the party shall describe the nature of any proposed testimony as specified in paragraphs (d) through (g) of this section. If the administrative patent judge finds that testimony is needed to decide the motion, the administrative patent judge may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

(d) * * *

(1) Identify the person whom it expects to use as an expert;

* * * * *

39. Section 1.640 is amended by revising paragraphs (a), (b), (c), (d) introductory text, (d)(1), (d)(3) and (e) to read as follows:

§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.

(a) A hearing on a motion may be held in the discretion of the administrative patent judge. The administrative patent judge shall set the date and time for any hearing. The length of oral argument at a hearing on a motion is a matter within the discretion of the administrative patent judge. An administrative patent judge may direct that a hearing take place by telephone.

(b) Unless an administrative patent judge or the Board is of the opinion that an earlier decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion shall be deferred to final hearing. Motions not deferred to final hearing will be decided by an administrative patent judge. An administrative patent judge may consult with an examiner in deciding motions. An administrative patent judge may take up motions for decisions in any order, may grant, deny, or dismiss any motion, and may take such other action which will secure the just, speedy, and inexpensive determination of the interference. A matter raised by a party in support of or in opposition to a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing. If the administrative patent judge determines

that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions on motions or on matters raised sua sponte by the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred motions that the party wishes to have considered at final hearing. Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified by the party or by an opponent for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1,671(e) during the testimony-in-chief period of the party.

(1) When appropriate after the time expires for filing replies to oppositions to preliminary motions, the administrative patent judge will set a time for filing any amendment to an application involved in the interference and for filing a supplemental preliminary statement as to any new counts which may become involved in the interference if a preliminary motion to amend or substitute a count has been filed. Failure or refusal of a party to timely present an amendment required by an administrative patent judge shall be taken without further action as a disclaimer by that party of the invention involved. A supplemental preliminary statement shall meet the requirements specified in §§ 1.623, 1.624, 1.625, or 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). At an appropriate time in the interference, and when necessary, an order will be entered redeclaring the interference.

(2) After the time expires for filing preliminary motions, a further preliminary motion under § 1.633 will not be considered except as provided by § 1.645(b).

(c) When a decision on any motion under §§ 1.633, 1.634, or 1.635 or on any matter raised sua sponte by an administrative patent judge is entered which does not result in the issuance of an order to show cause under paragraph (d) of this section, a party may file a request for reconsideration within 14 days after the date of the decision. The request for reconsideration shall be filed and served by hand or Express Mail. The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. No opposition to a request for reconsideration shall be filed unless requested by an administrative patent judge or the Board. A decision ordinarily will not be modified unless an opposition has been requested by an administrative patent judge or the Board. The request for reconsideration normally will be acted on by the administrative patent judge or the panel of the Board which issued the decision.

(d) An administrative patent judge may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion or on a matter raised sua sponte by an administrative patent judge is entered which is dispositive of the interference against the party as to any count;

* * * * *

(3) The party is a junior party whose preliminary statement fails to overcome the effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter judgment in accordance with the order unless, within 20 days after the date of the order, the party against whom the order issued files a paper which shows good cause why judgment should not be entered in accordance with the order.

(1) If the order was issued under paragraph (d)(1) of this section, the paper may:

(i) Request that final hearing be set to review any decision which is the basis for the order as well as any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at final hearing or

(ii) Fully explain why judgment should not be entered.

(2) Any opponent may file a response to the paper within 20 days of the date of service of the paper. If the order was issued under paragraph (d)(1) of this section and the party's paper includes a request for final hearing, the opponent's response must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. If the order was issued under paragraph (d)(1) of this section and the paper does not include a request for final hearing, the opponent's response may include a request for final hearing, which must identify every decision of the administrative patent judge that the opponent wishes to have reviewed by the Board at a final hearing. Where only the opponent's response includes a request for a final hearing, the party filing the paper shall, within 14 days from the date of service of the opponent's response, file a reply identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing.

(3) The paper or the response should be accompanied by a motion (§ 1.635) requesting a testimony period if either party wishes to introduce any evidence to be considered at final hearing (§ 1.671). Any evidence that a party wishes to have considered with respect to the decisions and deferred motions identified for consideration or review at final hearing shall be filed or, if appropriate, noticed under § 1.671(e) during the testimony period of the party. A request for a testimony period shall be construed as including a request for final hearing.

(4) If the paper contains an explanation of why judgment should not be entered in accordance with the order, and if no party has requested a final hearing, the decision that is the basis for the order shall be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board shall enter judgment against the party against whom the order issued.

40. Section 1.641 is revised to read as follows:

§ 1.641 Unpatentability discovered by administrative patent judge.

(a) During the pendency of an interference, if the administrative patent judge becomes aware of a reason why a claim designated to correspond to a count may not be patentable, the administrative patent judge may enter an order notifying the parties of the reason and set a time within which each party may present its views, including any argument and any supporting evidence, and, in the case of the party whose claim may be unpatentable, any appropriate preliminary motions under §§ 1.633(c), (d) and (h).

(b) If a party timely files a preliminary motion in response to the order of the administrative patent judge, any opponent may file an opposition (§ 1.638(a)). If an opponent files an opposition, the party may reply (§ 1.638(b)).

(c) After considering any timely filed views, including any timely filed preliminary motions under § 1.633, oppositions and replies, the administrative patent judge shall decide how the interference shall proceed.

41. Section 1.642 is revised to read as follows:

§ 1.642 Addition of application or patent to interference.

During the pendency of an interference, if the administrative patent

judge becomes aware of an application or a patent not involved in the interference which claims the same patentable invention as a count in the interference, the administrative patent judge may add the application or patent to the interference on such terms as may be fair to all parties.

42. Section 1.643(b) is revised to read as follows:

§ 1.643 Prosecution of interference by assignee.

* * * * *

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show the inability or refusal of the inventor to prosecute the interference or other cause why it is in the interest of justice to permit the assignee of a part interest to prosecute the interference. The administrative patent judge may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

43. Section 1.644 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (b), (c), (d), (f) and (g) to read as follows:

§ 1.644 Petitions in interferences.

(a) There is no appeal to the Commissioner in an interference from a decision of an administrative patent judge or the Board. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an administrative patent judge or the Board and the administrative patent judge or the Board shall be of the opinion that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and that an immediate decision on petition by the Commissioner may materially advance the ultimate termination of the interference;

(2) The petition seeks to invoke the supervisory authority of the Commissioner and does not relate to the merits of priority of invention or patentability or the admissibility of evidence under the Federal Rules of Evidence; or

* * * * *

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the administrative patent judge or the Board may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to the party's brief for final hearing (see § 1.656). Any petition under paragraph (a)(3) of this section shall be timely if it is filed simultaneously with a proper motion under §§ 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. Any opposition to a petition under paragraphs (a)(1) or (a)(2) of this section shall be filed within 20 days of the date of service of the petition. Any opposition to a petition under paragraph (a)(3) of this section shall be filed within 20 days of the date of service of the petition or the date an opposition to the motion is due, whichever is earlier.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the administrative patent judge, the Board, or the Commissioner.

(d) Any petition must contain a statement of the facts involved, in numbered paragraphs, and the point or points to be reviewed and the action requested. The petition will be decided on the basis of the record made before the administrative patent judge or the Board, and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

* * * * *

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within 14 days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(h). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. The decision will not ordinarily be modified unless such an opposition has been requested by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand or Express Mail complies with this paragraph.

* * * * *

44. Section 1.645 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action, a party may file a motion (§ 1.635) seeking an extension of time to take action in an interference. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action. The motion shall be filed within sufficient time to actually reach the administrative patent judge before expiration of the time for taking action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an administrative patent judge sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed will not be considered except upon notion (§ 1.635) which shows good cause why the paper was not timely filed, or where an administrative patent judge or the Board, sua sponte, is of the opinion that it would be in the interest of justice to consider the paper. See § 1.304(a) for exclusive procedures relating to belated filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or belated commencement of a civil action.

* * * * *

(d) An administrative patent judge may stay proceedings in an interference.

45. Section 1.646 is amended by revising paragraphs (a)(1), (a)(2), (b), (c) introductory text, (c)(1), (c)(4), (d) and (e); redesignating paragraph (c)(5) as paragraph (c)(6) and revising it; and adding a new paragraph (c)(5) to read as follows:

§ 1.646 Service of papers, proof of service.

(a) * * *

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an administrative patent judge.

(2) Certified transcripts and exhibits which accompany the transcripts filed under § 1.676; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An administrative patent judge may order additional service or waive service where appropriate.

(c) Unless otherwise ordered by an administrative patent judge, or except as otherwise provided by this subpart, service of a paper shall be made as follows:

(1) By handing a copy of the paper or causing a copy of the paper to be handed to the person served.

* * * * *

(4) By mailing a copy of the paper by first class mail; when service is by first class mail the date of mailing is regarded as the date of service.

(5) By mailing a copy of the paper by Express Mail; when service is by Express Mail the date of deposit with the U.S. Postal Service is regarded as the date of service.

(6) When it is shown to the satisfaction of an administrative patent judge that none of the above methods of obtaining or serving the copy of the paper was successful, the administrative patent judge may order service by publication of an appropriate notice in the *Official Gazette.*

(d) An administrative patent judge may order that a paper be served by hand or Express Mail.

(e) The due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office. Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraphs (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the date and manner of service will be accepted as *prima facie* proof of service.

46. Section 1.647 is revised to read as follows:

§ 1.647 Translation of document in foreign language.

When a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

47. Section 1.651 is amended by revising paragraphs (a), (c)(1), (c)(2), (c)(3) and (d) to read as follows:

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an administrative patent judge shall set a time for filing motions (§ 1.635) for additional discovery under § 1.687(c) and testimony periods for taking any necessary testimony.

* * * * *

(c) * * *

(1) The administrative patent judge orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the effective filing date of the party and the party has filed a preliminary statement alleging a date of invention prior to that date; or

* * * * *

(d) Testimony, including any testimony to be taken in a place outside the United States, shall be taken and completed during the testimony periods set under paragraph (a) of this section. A party seeking to extend the period for taking testimony must comply with §§ 1.635 and 1.645(a).

48. Section 1.652 is revised to read as follows:

§ 1.652 Judgment for failure to take testimony or file record.

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an administrative patent judge, with or without a motion (§ 1.635) by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

49. Section 1.653 is amended by removing and reserving paragraphs (c)(5), (f) and (h) and by revising paragraphs (a), (b), (c) introductory text, (c)(1), (c)(4), (d), (g) and (i) to read as follows:

§ 1.653 Record and exhibits.

(a) Testimony shall consist of affidavits under §§ 1.672 (b), (c) and (g), 1.682(c), 1.683(b) and 1.688(b), transcripts of depositions under §§ 1.671(g) and 1.672(a) when a deposition is authorized by an administrative patent judge, transcripts of depositions under §§ 1.672(d), 1.682(d), 1.683(c) and 1.688(c), agreed statements under § 1.672(h), transcripts of interrogatories, cross-interrogatories, and recorded answers and copies of written interrogatories and answers and written requests for admissions and answers under § 1.688(a).

(b) An affidavit shall be filed as set forth in § 1.677. A certified transcript of a deposition, including a deposition cross-examining an affiant, shall be filed as set forth in §§ 1.676, 1.677 and 1.678. An original agreed statement shall be filed as set forth in § 1.672(h).

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an administrative patent judge, each party shall file three copies and serve one copy of a record consisting of:

(1) An index of the names of the witnesses for the party, giving the pages of the record where the direct testimony and cross-examination of each witness begins.

* * * * *

(4) Each affidavit by a witness for the party, transcript, including transcripts of cross-examination of any affiant who testified for the party and transcripts of compelled deposition testimony by a witness for the party, agreed statement relied upon by the party, and transcript of interrogatories, cross-interrogatories and recorded answers.

* * * * *

(d) The pages of the record shall be consecutively numbered to the extent possible.

* * * * *

(g) The record may be produced by standard typographical printing or by any other process capable of producing a clear black permanent image. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. Footnotes may not be printed in type smaller than 9 point. The page size shall be 21.8 by 27.9 cm. (8½ by 11 inches) (letter size) with printed matter 16.5 by 24.1 cm. (6½ by 9½ inches). The record shall be bound with covers at their left edges in such manner as to lie flat when open to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested). When there is more than one volume, the numbers of the pages contained in each volume shall appear at the top of the cover for each volume.

(i) Each party shall file its exhibits with the record specified in paragraph (c) of this section. Exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions as well as

official records and publications filed by the party under § 1.682(a). One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(d), shall be filed with the record. Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit. Upon termination of an interference, an administrative patent judge may return an exhibit to the party filing the exhibit. When any exhibit is returned, an order shall be entered indicating that the exhibit has been returned.

* * * * *

50. Section 1.654 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1.654 Final hearing.

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. An administrative patent judge may set a date and time for final hearing. Unless otherwise ordered by an administrative patent judge or the Board, each party will be entitled to no more than 30 minutes of oral argument at final hearing. A party who does not file a brief for final hearing (§ 1.656(a)) shall not be entitled to appear at final hearing.

* * * * *

(d) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an administrative patent judge or the Board. No additional oral argument shall be had unless ordered by the Board.

51. Section 1.655 is revised to read as follows:

§ 1.655 Matters considered in rendering a final decision.

(a) In rendering a final decision, the Board may consider any properly raised issue, including priority of invention, derivation by an opponent from a party who filed a preliminary statement under § 1.625, patentability of the invention, admissibility of evidence, any interlocutory matter deferred to final hearing, and any other matter necessary to resolve the interference. The Board may also consider whether entry of any interlocutory order was an abuse of discretion. All interlocutory orders shall be presumed to have been correct, and the burden of showing an abuse of discretion shall be on the party attacking the order. When two or more interlocutory orders involve the same issue, the last entered order shall be presumed to have been correct.

(b) A party shall not be entitled to raise for consideration at final hearing any matter which properly could have been raised by a motion under §§ 1.633 or 1.634 unless the matter was properly raised in a motion that was timely filed by the party under §§ 1.633 or 1.634 and the motion was denied or deferred to final hearing, the matter was properly raised by the party in a timely filed opposition to a motion under §§ 1.633 or 1.634 and the motion was granted over the opposition or deferred to final hearing, or the party shows good cause why the issue was not properly raised by a timely filed motion or opposition. A party that fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count, or fails to timely argue the separate patentability of a particular claim when the ground for unpatentability is first raised, may not subsequently argue to an administrative patent judge or the Board the separate patentability of claims designated to correspond to the count with respect to that ground.

(c) In the interest of justice, the Board may exercise its discretion to consider an issue even though it would not otherwise be entitled to consideration under this section.

52. In § 1.656, paragraphs (a), (d), (e), (g), (h), and (i) are revised; paragraphs (b)(1) through (b)(6) are redesignated as (b)(3) through (b)(8); newly designated paragraphs (b)(5) and (b)(6) are revised; and new paragraphs (b)(1) and (b)(2) are added to read as follows:

§ 1.656 Briefs for final hearing.

(a) Each party shall be entitled to file briefs for final hearing. The administrative patent judge shall determine the briefs needed and shall set the time and order for filing briefs.

(b)* * *

(1) A statement of interest indicating the full name of every party represented by the attorney in the interference and the name of the real party in interest if the party named in the caption is not the real party in interest.

(2) A statement of related cases indicating whether the interference was previously before the Board for final hearing and the name and number of any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the U.S. Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference.

* * * * *

(5) A statement of the facts, in numbered paragraphs, relevant to the issues presented for decision with appropriate references to the record.

(6) An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues it is raising for consideration at final hearing, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.

* * * * *

(d) Unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding.

(e) An original and four copies of each brief must be filed.

* * * * *

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and four copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be in numbered paragraphs and shall be supported by specific references to the record. Any proposed conclusions of law shall be in numbered paragraphs and shall be supported by citation of cases, statutes, or other authority. Any opponent, separate from its opening or reply brief, but filed concurrently therewith, may file a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party shall file with its opening brief an original and four copies of a motion (§ 1.635) to suppress the evidence. The provisions of § 1.637(b) do not apply to a motion to suppress under this paragraph. Any objection previously made to the admissibility of the evidence of an opponent is waived unless the motion required by this paragraph is filed. A party that failed to

challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under § 1.672(c), 1.682(c), 1.683(b) or 1.688(b) may not move under this paragraph to suppress the evidence on that ground at final hearing. An original and four copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to show good cause within a time period set in the order, judgment may be entered against the junior party.

53. Section 1.657 is revised to read as follows:

§ 1.657 Burden of proof as to date of invention.

(a) A rebuttable presumption shall exist that, as to each count, the inventors made their invention in the chronological order of their effective filing dates. The burden of proof shall be upon a party who contends otherwise.

(b) In an interference involving copending applications or involving a patent and an application having an effective filing date on or before the date the patent issued, a junior party shall have the burden of establishing priority by a preponderance of the evidence.

(c) In an interference involving an application and a patent and where the effective filing date of the application is after the date the patent issued, a junior party shall have the burden of establishing priority by clear and convincing evidence.

54. Section 1.658 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.658 Final decision.

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may enter judgment, in whole or in part, remand the interference to an administrative patent judge for further proceedings, or take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the party's patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within one month after the date of the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any opposition to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Service of the request for reconsideration shall be by hand or Express Mail. The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision. A decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146).

* * * * *

55. Section 1.660 is amended by adding paragraph (e) to read as follows:

§ 1.660 Notice of reexamination, reissue, protest, or litigation.

* * * * *

(e) The notice required by this section is designed to assist the administrative patent judge and the Board in efficiently handling interference cases. Failure of a party to comply with the provisions of this section may result in sanctions under § 1.616. Knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the reexamination, application for reissue, protest, or litigation shall not be sufficient. The notice contemplated by this section is notice addressed to the administrative patent judge in charge of the interference in which the application or patent is involved.

56. Section 1.662 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by a party of a written disclaimer of the invention defined by a count, concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be treated as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application, other than an application for reissue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and the reissue application does not include a claim that corresponds to a count, judgment may be entered against the patentee. A patentee who files an application for reissue which includes a claim that corresponds to a count shall, in addition to complying with the provisions of § 1.660(b), timely file a preliminary motion under § 1.633(h) or show good cause why the motion could not have been timely filed or would not be appropriate.

* * * * *

57. Section 1.664 is revised to read as follows:

§ 1.664 Action after interference.

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an administrative patent judge, amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this subpart provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

58. Section 1.671 is amended by revising paragraphs (a) introductory text, (c)(1), (c)(2), (c)(6), (c)(7), (e), (f) and (g); redesignating paragraph (h) as paragraph (i) and revising it, and adding new paragraphs (h) and (j) to read as follows:

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of testimony and referenced exhibits, official records and publications filed under § 1.682, testimony and referenced exhibits from another interference, proceeding, or action filed under § 1.683, discovery relied upon under § 1.688, and the

specification (including claims) and drawings of any application or patent:

* * * * *

(c) * * *

(1) *Courts of the United States, U.S. Magistrate, court, trial court,* or *trier of fact* means administrative patent judge or Board as may be appropriate.

(2) *Judge* means administrative patent judge.

* * * * *

(6) *Before the hearing* in Rule 703 of the Federal Rules of Evidence means before giving testimony by affidavit or oral deposition.

(7) *The trial or hearing* in Rules 803(24) and 804(5) of the Federal Rules of Evidence means the taking of testimony by affidavit or oral deposition.

* * * * *

(e) A party may not rely on an affidavit (including any exhibits), patent or printed publication previously submitted by the party under § 1.639(b) unless a copy of the affidavit, patent or printed publication has been served and a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit, patent or printed publication. When proper notice is given under this paragraph, the affidavit, patent or printed publication shall be deemed as filed under §§ 1.640(b), 1.640(e)(3), 1.672(b) or 1.682(a), as appropriate.

(f) The significance of documentary and other exhibits identified by a witness in an affidavit or during oral deposition shall be discussed with particularity by a witness.

(g) A party must file a motion (§ 1.635) seeking permission from an administrative patent judge prior to compelling testimony or production of documents or things under 35 U.S.C. 24 or from an opposing party. The motion shall describe the general nature and the relevance of the testimony, document, or thing. If permission is granted, the party shall notice a deposition under § 1.673 and may proceed to take testimony.

(h) A party must file a motion (§ 1.635) seeking permission from an administrative patent judge prior to compelling testimony or production of documents or things in a foreign country.

(1) In the case of testimony, the motion shall:

(i) Describe the general nature and relevance of the testimony;

(ii) Identify the witness by name or title;

(iii) Identify the foreign country and explain why the party believes the witness can be compelled to testify in the foreign country, including a description of the procedures that will be used to compel the testimony in the foreign country and an estimate of the time it is expected to take to obtain the testimony; and

(iv) Demonstrate that the party has made reasonable efforts to secure the agreement of the witness to testify in the United States but has been unsuccessful in obtaining the agreement, even though the party has offered to pay the expenses of the witness to travel to and testify in the United States.

(2) In the case of production of a document or thing, the motion shall:

(i) Describe the general nature and relevance of the document or thing;

(ii) Identify the foreign country and explain why the party believes production of the document or thing can be compelled in the foreign country, including a description of the procedures that will be used to compel production of the document or thing in the foreign country and an estimate of the time it is expected to take to obtain production of the document or thing; and

(iii) Demonstrate that the party has made reasonable efforts to obtain the agreement of the individual or entity having possession, custody, or control of the document to produce the document or thing in the United States but has been unsuccessful in obtaining that agreement, even though the party has offered to pay the expenses of producing the document or thing in the United States.

(i) Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

(j) The weight to be given deposition testimony taken in a foreign country will be determined in view of all the circumstances, including the laws of the foreign country governing the testimony. Little, if any, weight may be given to deposition testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence, as a matter of fact, that knowingly giving false testimony in that country in connection with an interference proceeding in the United States Patent and Trademark Office is punishable under the laws of that country and that the punishment in that country for such false testimony is comparable to or greater than the punishment for perjury committed in the United States. The administrative patent judge and the Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.

59. Section 1.672 is revised to read as follows:

§ 1.672 Manner of taking testimony.

(a) Unless testimony must be compelled under 35 U.S.C. 24, compelled from a party, or compelled in a foreign country, testimony of a witness shall be taken by affidavit in accordance with this subpart. Testimony which must be compelled under 35 U.S.C. 24, compelled from a party, or compelled in a foreign country shall be taken by oral deposition.

(b) A party presenting testimony of a witness by affidavit shall, within the time set by the administrative patent judge for serving affidavits, file a copy of the affidavit or, if appropriate, notice under § 1.671(e). If the affidavit relates to a party's case-in-chief, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-chief. If the affidavit relates to a party's case-in-rebuttal, it shall be filed or noticed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-rebuttal. A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on any thing mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document. The pages of affidavits filed under this paragraph and of any other testimony filed therewith under §§ 1.683(a) and 1.688(a) shall, to the extent possible, be given sequential numbers which shall also serve as the record page numbers for the affidavits and other testimony in the party's record to be filed under § 1.653. Exhibits identified in the affidavits or in any other testimony filed under §§ 1.683(a) and 1.688(a) and any official records and printed publications filed under § 1.682(a) shall, to the extent possible, be given sequential exhibit numbers, which shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The affidavits, testimony filed under §§ 1.683(a) and 1.688(a) and exhibits shall be accompanied by an index of the names of the witnesses, giving the number of the page where the testimony of each witness begins, and by an index of the exhibits briefly describing the nature of each exhibit and giving the number of the page where each exhibit is first identified and offered into evidence.

(c) If an opponent objects to the admissibility of any evidence contained

in or submitted with an affidavit filed under paragraph (b) of this section, the opponent must, no later than the date set by the administrative patent judge for filing objections under this paragraph, file objections stating with particularity the nature of each objection. An opponent that fails to object to the admissibility of the evidence contained in or submitted with an affidavit on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files objections, the party may, within 20 days of the due date for filing objections, file one or more supplemental affidavits, official records or printed publications to overcome the objections. No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits filed under this paragraph shall, to the extent possible, be sequentially numbered beginning with the number following the last page number of the party's testimony submitted under paragraph (b) of this section. The page numbers assigned to the supplemental affidavits shall also serve as the record page numbers for the supplemental affidavits in the party's record filed under § 1.653. Additional exhibits identified in supplemental affidavits and any supplemental official records and printed publications shall, to the extent possible, be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraph (b) of this section. The exhibit numbers shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The supplemental affidavits shall be accompanied by an index of the names of the witnesses and an index of exhibits of the type specified in paragraph (b) of this section.

(d) After the time expires for filing objections and supplemental affidavits, or earlier when appropriate, the administrative patent judge shall set a time within which any opponent may file a request to cross-examine an affiant on oral deposition. If any opponents requests cross-examination of an affiant, the party shall notice a deposition at a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under paragraphs (b) and (c) of this section, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of the transcripts served under this paragraph shall, to the extent possible, be sequentially numbered beginning with the number following the last page number of the party's supplemental affidavits submitted under paragraph (c) of this section. The numbers assigned to the transcript pages shall also serve as the record page numbers for the transcripts in the party's record filed under § 1.653. Additional exhibits identified in the transcripts, shall, to the extent possible, be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraphs (b) and (c) of this section. The exhibit numbers assigned to the additional exhibits shall also serve as the exhibit numbers when those exhibits are filed with the party's record. The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in paragraph (b) of this section.

(e) [Reserved]

(f) When a deposition is authorized to be taken within the United States under this subpart and if the parties agree in writing, the deposition may be taken in any place within the United States, before any person authorized to administer oaths, upon any notice, and in any manner, and when so taken may be used like other depositions.

(g) If the parties agree in writing, the affidavit testimony of any witness may be submitted without opportunity for cross-examination.

(h) If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth how a particular witness would testify, if called, or the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

(i) In an unusual circumstance and upon a showing that testimony cannot be taken in accordance with the provisions of this subpart, an administrative patent judge upon motion (§ 1.635) may authorize testimony to be taken in another manner.

60. Section 1.673 is amended by revising paragraphs (a), (b) introductory text, (c) through (e) and (g) to read as follows:

§ 1.673 Notice of examination of witness.

(a) A party authorized to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions to be taken in the United States may be noticed for a reasonable time and place in the United States. A deposition may not be noticed for any other place without approval of an administrative patent judge. The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree or an administrative patent judge or the Board determine otherwise, a party shall serve, but not file, at least three working days prior to the conference required by paragraph (g) of this section, if service is made by hand or Express Mail, or at least 14 days prior to the conference if service is made by any other means, the following:

* * * * *

(c) A party shall not be permitted to rely on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section:

(1) Unless all opponents agree in writing or on the record to permit the party to rely on the witness, document or thing, or

(2) Except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows good cause why the notice, documents, or lists were not served in accordance with this section.

(d) Each opponent shall have a full opportunity to attend a deposition and cross-examine.

(e) A party who has presented testimony by affidavit and is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph

(g) of this section, file and serve a single notice of deposition stating the time and place of each cross-examination deposition to be taken.

* * * * *

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an administrative patent judge who shall then designate the time and place for conducting the deposition.

* * * * *

61. Section 1.674 is amended by revising paragraph (a) to read as follows:

§ 1.674 Persons before whom depositions may be taken.

(a) A deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

* * * * *

62. Section 1.675 is amended by revising paragraph (d) to read as follows:

§ 1.675 Examination of witness, reading and signing transcript of deposition.

* * * * *

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the deposition, when the testimony has been transcribed a transcript of the deposition shall, unless the witness refuses to read and/or sign the transcript of the deposition, be read by the witness and then signed by the witness in the form of:

(1) An affidavit in the presence of any notary or

(2) A declaration.

63. Section 1.676 is amended by revising paragraph (a)(4) to read as follows:

§ 1.676 Certification and filing by officer, marking exhibits.

(a) * * *

(4) The presence or absence of any opponent.

* * * * *

64. Section 1.677 is revised to read as follows:

§ 1.677 Form of an affidavit or a transcript of deposition.

(a) An affidavit or a transcript of a deposition must be on opaque, unglazed, durable paper approximately 21.8 by 27.9 cm. (8½ by 11 inches) in size (letter size). The printed matter shall be double-spaced on one side of the paper in not smaller than 11 point type with a margin of 3.8 cm. (1½ inches) on the left-hand side of the page. The pages of each transcript must be consecutively numbered and the name of the witness shall appear at the top of each page (§ 1.653(e)). In transcripts of depositions, the questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

(b) Exhibits must be numbered consecutively to the extent possible and each must be marked as required by § 1.653(i).

65. Section 1.678 is revised to read as follows:

§ 1.678 Time for filing transcript of deposition.

Unless otherwise ordered by an administrative patent judge, a certified transcript of a deposition must be filed in the Patent and Trademark Office within one month after the date of deposition. If a party refuses to file a certified transcript, the administrative patent judge or the Board may take appropriate action under § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

66. Section 1.679 is revised to read as follows:

§ 1.679 Inspection of transcript.

A certified transcript of a deposition filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office unless authorized by an administrative patent judge upon such terms as may be appropriate.

67. Section 1.682 is revised to read as follows:

§ 1.682 Official records and printed publications.

(a) A party may introduce into evidence, if otherwise admissible, an official record or printed publication not identified in an affidavit or on the record during an oral deposition of a witness, by filing a copy of the official record or printed publication or, if appropriate, a notice under § 1.671(e). If the official record or printed publication relates to the party's case-in-chief, it shall be filed or noticed together with any affidavits filed by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-chief. If the official record or printed publication relates to rebuttal, it shall be filed or noticed together with any affidavits filed by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Official records and printed publications filed under this paragraph shall be assigned sequential exhibit numbers by the party in the manner set forth in § 1.672(b). The official record and printed publications shall be accompanied by a paper which shall:

(1) Identify the official record or printed publication;

(2) Identify the portion thereof to be introduced in evidence; and

(3) Indicate generally the relevance of the portion sought to be introduced in evidence.

(b) [Reserved]

(c) Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or to the admissibility of the official record or printed publication shall be filed no later than the date set by the administrative patent judge for the opponent to file objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to object to the admissibility of the official record or printed publication on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond by filing one or more supplemental affidavits, official records or printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of

witnesses and an index of exhibits of the type required by § 1.672(b).

(d) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (c) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit served by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file notice of a deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

68. Section 1.683 is revised to read as follows:

§ 1.683 Testimony in another interference, proceeding, or action.

(a) A party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition and referenced exhibits from another interference, proceeding, or action involving the same parties by filing a copy of the affidavit or a copy of the transcript of the oral deposition and the referenced exhibits. If the testimony and referenced exhibits relate to the party's case-in-chief, they shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not file any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-chief. If the testimony and referenced exhibits relate to rebuttal, they shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Pages of affidavits and deposition transcripts served under this paragraph and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b). The testimony shall be accompanied by a paper which specifies with particularity the exact testimony to be used and demonstrates its relevance.

(b) Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or the admissibility of the testimony and referenced exhibits filed under this section shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the testimony or referenced exhibits on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with one or more supplemental affidavits, official records or printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental evidence under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of an affidavit or supplemental affidavit submitted under paragraph (a) or (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

69. Section 1.684 is removed and reserved.

70. Section 1.685 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.685 Errors and irregularities in depositions.

* * * * *

(d) An objection to the deposition on any grounds, such as the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition, is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final

hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an administrative patent judge or the Board.

71. Section 1.687 is amended by revising paragraph (c) to read as follows:

§ 1.687 Additional discovery.

* * * * *

(c) Upon a motion (§ 1.635) brought by a party within the time set by an administrative patent judge under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an administrative patent judge may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. See § 1.647 concerning translations of documents in a foreign language.

* * * * *

72. Section 1.688 is revised to read as follows:

§ 1.688 Use of discovery.

(a) If otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer. If the answer relates to a party's case-in-chief, the answer shall be served together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief. If the answer relates to the party's rebuttal, the answer shall be served together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not serve any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-rebuttal.

(b) Unless otherwise ordered by an administrative patent judge, any written objection to the admissibility of an answer shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of an answer on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with one or more supplemental affidavits, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672(b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

(d) A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

73. Section 1.690 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.690 Arbitration of interferences.

(a) Parties to a patent interference may determine the interference or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of Title 9, United States Code. The parties must notify the Board in writing of their intention to arbitrate. An agreement to arbitrate must be in writing, specify the issues to be arbitrated, the name of the arbitrator or a date not more than thirty (30) days after the execution of the agreement for the selection of the arbitrator, and provide that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board. A copy of the agreement must be filed within twenty (20) days after its execution. The parties shall be solely responsible for the selection of the arbitrator and the rules for conducting proceedings before the arbitrator. Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in this subpart, as determined by the administrative patent judge.

(b) An arbitration proceeding under this section shall be conducted within such time as may be authorized on a case-by-case basis by an administrative patent judge.

(c) An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner the issue or issues arbitrated and the disposition of each issue. The award may include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an administrative patent judge, the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.

* * * * *

Dated: March 3, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–6377 Filed 3–16–95; 8:45 am]

BILLING CODE 3510–16–M

Friday
March 17, 1995

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing for Public and Indian Housing

Funding Availability for Comprehensive Improvement Assistance Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3867; FR–3774–N–02]

Notice of Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1995.

SUMMARY: This Notice informs HAs that own or operate fewer than 250 units and, therefore, are eligible to apply and compete for CIAP funds, of the availability of FY 1995 CIAP funding. HAs with 250 or more units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: Application is due on or before 3:00 p.m. local time on May 16, 1995, at the HUD Field Office with jurisdiction over the Public Housing Agency or Indian Housing Authority (herein referred to as HA), Attention: Director, Office of Public Housing, or Administrator, Office of Native American Programs.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, DC 20410. Telephone (202) 708–1640. (This is not a toll-free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., B–133, Washington, DC 20410. Telephone (202) 755–0032. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4595. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

On January 20, 1995, at 60 FR 4352, the Department published an Advance Notice of FY 1995 CIAP, setting forth all application requirements, except the allocation amounts and the application deadline date. Since the requirements set forth in the Advance Notice pertain to this NOFA, the entire Advance Notice is being republished as an attachment to this NOFA.

II. Allocation Amounts

(a) *Total Available.* The FY 1995 HUD Appropriations Act P.L. 103–327, enacted September 28, 1994, made available $3,700,000,000 of budget authority for the Modernization Program in the Annual Contributions Account. Funding may change if the carry-overs, recaptures and transfers estimated to occur in FY 1995 are not realized. The following chart shows the total amount of funds available in FY 1995, which is the appropriation, plus the carry-over from FY 1994, less the reduction and set-asides, as of the date of this NOFA:

FY 1995 Appropriation ...	$3,700,000,000
Plus Carry-over from FY 1994	194,092,503
Less Annual Contributions Account Reduction	(79,049,983)
FY 1995 Adjusted Appropriation	3,815,042,520
Less FY 1995 Set-Asides:	
Choice in Management (Being reevaluated)*	100,000,000
Emergency and Natural Disaster Reserve	75,000,000
Section 6J Activities* ..	40,042,520
Tenant Opportunity Program*	25,000,000
Inspection and Technical Assistance*	15,270,323
CGP Allocation from CGP Carry-Over	10,882,865
LBP Risk Assessment*	8,052,534
LBP Indemnification	971,983
Total Set-Asides	275,220,225
FY 1995 Adjusted Appropriation Less Set-Asides	3,539,822,295

*Set-asides to be implemented through separate NOFAs or Requests for Proposals.

(b) *Explanation of Carry-Overs.* The $194,092,503 in carry-overs from FY 1994 are:

(1) $100,000,000 from the set-aside for Choice-in-Management;

(2) $40,042,520 from the set-aside for implementing Section 6J activities;

(3) $32,259,237 from the national reserve for emergencies and natural and other disasters;

(4) $10,882,865 from the CGP allocation, including $1,438,509 from three HAs which did not apply for their FY 1994 grant, $99,963 unused due to the statutorily authorized conversion of a public housing project to a Section 8 project, and $9,344,393 from reduced formula funding of Mod Troubled PHAs;

(5) $8,052,534 of unused funds from the Lead-Based Paint (LBP) Risk Assessment set-aside, established in FY 1992;

(6) $1,612,976 from the set-aside for the Vacancy Reduction Program;

(7) $971,983 from the set-aside for the indemnification of three PHAs (Albany, New York; Cambridge, Massachusetts; and Omaha, Nebraska) that are participating in the LBP Abatement Demonstration. The FY 1991 Appropriations Act extended the availability of these funds appropriated in FY 1990 from October 1, 1991 to October 1, 1998;

(8) $270,323 from the set-aside for inspection of modernization work and technical assistance for HAs; and

(9) $65 from unassigned CIAP funds.

(c) *Allocation between CGP and CIAP.* The allocation between CGP and CIAP is explained below:

FY 1995 Adjusted Appropriation, Less Set-Asides	$3,539,822,295
Less CGP Credits Withheld for Mod Troubled Agencies	16,862,619
Amount Available for CGP and CIAP	3,522,959,676
CGP Allocation	3,153,244,533
CIAP Allocation	369,715,143

*Does not include $10,882,865 in CGP funds carried over from FY 1994 which will be added to the CGP allocation.

(1) The $3,522,959,676 balance is allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded ABT study of modernization needs. This allocation results in CIAP agencies receiving 10.49% or $369, 715, 143 and CGP agencies receiving 89.51% or $3,153,244,533 (plus the $10,822,865 carryover for a total of $3,164,067,398) of the funds available.

(i) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes, and items that are necessary for the long-term vaibility of a specific housing development.

(ii) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes.

(2) The $369,715,143 available to CIAP agencies is allocated between Public Housing at 91.8505% or $339,585,355, and Indian Housing at 8.1495% or $30,129,788. This allocation also is based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%).

(d) *Subassignment of Funds to Field Offices of Public Housing (OPH).* Headquarters has determined the distribution of Public Housing CIAP funds for each Field OPH, based on the relative shares of backlog and accrual needs for CIAP PHAs, adjusted as necessary.

(1) The Field OPH Director shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Public Housing CIAP become available, Headquarters will allocate the funds to one or more Field OPHs based on their relative shares of modernization need, approvable applications, and PHA capability to carry out the modernization.

(3) If a Field OPH does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field OPHs based on approvable applications and PHA capability to carry out the modernization.

Of the $339,585,355 available for Public Housing, 1% or $3,395,854 has been set aside to carry out goals related to pending civil rights litigation (e.g., Young v. Cisneros), which is subject to judicial oversight. The following table shows the distribution to CIAP funds for PHAs, excluding IHAs, assigned by Headquarters to each Field OPH as percentages of the $336,189,501 balance available for Public Housing:

Office of Public Housing (OPH)	Percent of Public Housing Funds
New England Region:	
Massachusetts State Office	2.6187
Connecticut State Office	.9266
New Hampshire State Office	1.5066
Rhode Island State Office	.7365
New York/New Jersey Region:	
Buffalo Area Office	2.1551
New Jersey State Office	2.7271
New York State Office	1.1576
Midatlantic Region:	
Maryland State Office	.4142
West Virginia State Office	1.4359
Pennsylvania State Office	1.1444
Pittsburgh Area Office	1.2048
Virginia State Office	.5756
District of Columbia Office	.1686
Southeast Region:	
Georgia State Office	5.3561
Alabama State Office	4.7698
South Carolina State Office	.9216
North Carolina State Office	3.0244
Mississippi State Office	1.7112
Jacksonville Area Office	2.9639
Knoxville Area Office	.9171
Kentucky State Office	4.7691
Tennessee State Office	1.8640
Midwest Region:	
Illinois State Office	3.5943
Cincinnati Area Office	.4374
Cleveland Area Office	.5098
Ohio State Office	1.1247
Michigan State Office	2.0393
Grand Rapids Area Office	3.0354
Indiana State Office	1.2262
Wisconsin State Office	2.8249
Minnesota State Office	2.9713
Southwest Region:	
New Mexico State Office	1.3454
Texas State Office	5.4523
Houston Area Office	1.1773
Arkansas State Office	3.0053
Louisiana State Office	3.9795
Oklahoma State Office	1.9327
San Antonio Area Office	2.6835
Great Plains Region:	
Iowa State Office	1.4211
Kansas/Missouri State Office	3.8535
Nebraska State Office	1.2155
St. Louis Area Office	2.2640
Rocky Mountain Region:	
Colorado State Office	3.5448
Pacific/Hawaii Region:	
Los Angeles Area Office	1.2057
Arizona State Office	1.2634
Sacramento Area Office	.2747
California State Office	1.5927
Northwest/Alaska Region:	
Oregon State Office	1.2688
Washington State Office	1.6876
Total	100.0000

(e) *Subassignment of Funds to Offices of Native American Programs (ONAPs).* Headquarters has determined the distribution of Indian Housing CIAP funds for each ONAP, based on the relative shares of backlog and accrual needs for CIAP IHAs, adjusted as necessary. The fund assignment will cover Indian Housing and any Public Housing owned and operated by IHAs.

(1) The ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Indian Housing CIAP become available, Headquarters will allocate the funds to one or more ONAPs based on their relative shares of modernization need, approvable applications, and IHA capability to carry out the modernization.

(3) If an ONAP does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more ONAPs based on approvable applications and IHA capability to carry out the modernization.

The following table shows the distribution of CIAP funds for IHAs, assigned by Headquarters to each ONAPs as percentages of the total $30,129,788 available for Indian Housing:

Office of Native American Programs (ONAP)	Percent of Indian Housing Funds
Eastern/Woodlands	14.8444
Southern Plains	12.3324
Northern Plains	13.3174
Southwest	29.9263
Northwest	24.4868
Alaska	5.0927
Total	100.0000

III. Application Deadline Date

The CIAP Application must be physically received by the local HUD Field Office by 3 p.m. local time on May 16, 1995. Faxed copies will *not* be considered official applications. The application deadline for this NOFA is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will not consider any application that is received after the application deadline. All applicants should take this into account and submit application materials as early as possible to avoid any risk brought about by unanticipated delays or delivery-related problems. This application deadline does not apply to applications for emergency funding, which may be submitted at any time when funds are available.

IV. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

Dated: March 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Attachment

Note: This is a republication of the advance notice published on January 20, 1995 at 60 FR 4352.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3867; FR 3774–N–01]

Advance Notice of Fiscal Year (FY) 1995 Funding for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Advance Notice of FY 1995 Funding for CIAP.

SUMMARY: This Notice provides advance information to Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 public housing units and, therefore, are eligible to apply and compete for CIAP funds, of the requirements for applying for FY 1995

CIAP funding. Therefore, the CIAP eligible HA may start now to plan and develop its FY 1995 CIAP application. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: This Advance Notice does not establish an application deadline date. A Notice of Fund Availability (NOFA) will be published at a later date and will establish an application deadline date, as well as set forth the amount of funds available for the CIAP.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, DC 20410. Telephone (202) 708–1640. (This is not a toll free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development 451 Seventh Street, SW., B–133, Washington, DC 20410. Telephone (202) 755–0032. (This is not a toll free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4595. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Purpose and Substantive Description

(a) *Authority.* Sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). An interim rule revising the CIAP regulation, 24 CFR Part 968, Subparts A and B, for PHAs and 24 CFR Part 905, Subpart I, for IHAs, and streamlining the program was published on March 15, 1993. A final rule will be published shortly.

(b) *Program Highlights.*

(1) *Departmental Priority.* Improving Public and Indian Housing is one of the Department's major priorities. Accordingly, a review has been made of the entire Public and Indian Housing Program. Specifically, the Department is very concerned about several aspects of the Modernization Program, as follows:

(i) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant/substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy due to improved design promoting the blend of public housing into the surrounding neighborhood or to additional amenities improving the quality of life.

(ii) *Expediting the Program.* HAs are reminded that they are expected to obligate all funds within two years and to expend all funds within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer project implementation schedule is approved by the Field Office. If the HA does not obligate approved funds in a timely manner, the Department will recapture the funds unless there are clear, valid reasons for not meeting the obligation deadline; i.e., delays which are outside of the HA's control.

(iii) *Resident Involvement and Economic Uplift.* HAs are required to explore and implement through all feasible means the involvement of residents, including duly-elected resident councils, in every aspect of the CIAP, from planning through implementation. HAs shall use the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3) to the maximum feasible extent. HAs are encouraged to seek ways to employ Section 3 residents in all aspects of the CIAP's operation and to develop means to promote contracting opportunities for businesses in Section 3 areas. Refer to 24 CFR 85.36(e) regarding the provision of such opportunities.

(iv) *Elimination of Vacant Units.* Although the Department has a vacancy reduction effort specifically aimed at reducing vacancies, HAs are encouraged to apply for CIAP funds to address vacant units where the work does not involve routine maintenance, but will result in reoccupancy.

(2) *Relationship to Technical Review Factors.* The Departmental goal of improving Public and Indian Housing is reflected in the technical review factors, set forth in section IV(c)(5) of this Notice, on which the Field Office scores each HA's CIAP Application. Based on the HA's total score, the Field Office then ranks each HA to determine selection for Joint Review. The technical review factors include the following Departmental initiatives to improve Public and Indian Housing:

(i) Restoration of vacant units to occupancy;

(ii) Resident capacity-building, including opportunities for resident management;

(iii) Economic development, through job training and employment opportunities for residents and contracting opportunities for Section 3 businesses;

(iv) Drug elimination initiatives; and

(v) Partnership with local government.

II. Allocation Amounts

The Department will publish separately a NOFA in the **Federal Register,** explaining the FY 1995 appropriation, minus any FY 1995 set-asides and reductions, plus any carry-over from FY 1994. The NOFA also will explain the allocation between the CGP and the CIAP, and within the CIAP, the allocation between Public Housing and Indian Housing and the allocation to each Field Office/Office of Native Americans Program (ONAP). The Field Office Public Housing Director or the ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

III. Application Preparation and Submission by HA

(a) *Planning.* In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical improvement needs should be reviewed against the modernization standards, as set forth in HUD Handbook 7485.2, as revised, and any cost-effective energy conservation measures, identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. (See section I(b)(1)(i) of this Notice). In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information. The term ''Field Office'' includes the ONAP.

(b) *Resident Involvement/Local Official Consultation Requirements.*

(1) *Residents/Homebuyers.* The CIAP regulations at §§ 968.220 or 905.624 require the HA to establish a Partnership Process for rental developments which ensures full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(i) Before submission of the CIAP Application, consultation with residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization and request for resident recommendations;

(ii) Reasonable opportunity for residents, including duly-elected resident councils, to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(iii) Written response to residents, including duly-elected resident councils, indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review;

(iv) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP budget; and

(v) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local Officials.* Before submission of the CIAP Application, consultation with appropriate local officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(c) *Contents of CIAP Application.* Within the established time frame, the HA shall

submit the CIAP Application to the Field Office, with a copy to appropriate local/tribal officials. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(1) *Form HUD–52822, CIAP Application,* in an original and two copies, which includes:

(i) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in § 968.115 or § 905.603; description of work items required to correct identified deficiencies; and the estimated cost. *For example:*

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs; LBP testing; storm windows and doors; and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility of 2 units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of $90,000.

Development 1–3: 35 units of Turnkey III: 15 years old; physical needs are: physical accessibility of 3 units; and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

Note: Refer to Section IV(d)(3) of this Notice regarding the consequences of not including all developments in the CIAP Application; even where there are no known current needs.

(ii) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. *Examples* of management improvements include, but are not limited to the following areas:

(A) the management, financial, and accounting control systems of the HA;

(B) the adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(C) the adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(iii) a certification that the HA has met the requirements for consultation with local officials and residents/homebuyers and that all developments included in the application have long-term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(2) *A narrative statement,* in an original and two copies, addressing each of the technical review factors in section IV(c)(5) and, where applicable, the bonus points in section IV(c)(6).

(3) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements,* in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(4) *SF–LLL, Disclosure of Lobbying Activities,* in an original only, required of HAs established under State law, only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers, Members of Congress and their staff regarding specific grants or contracts.

(5) *Form HUD–2880, Applicant/Recipient Update/Disclosure Report,* in an original only, required of HAs established under State law.

(6) *At the option of the HA,* photographs or video cassettes showing the physical condition of the developments.

IV. Application Processing by Field Office.

(a) *Completeness Review (Corrections to Deficient Applications).* To be eligible for processing, the CIAP Application must be physically received by the Field Office within the time period specified in the NOFA to be published at a future date, and must be complete, including the signed certification. Immediately after the application deadline, the Field Office shall perform a completeness review to determine whether an application is complete, responsive to the NOFA and acceptable for technical processing.

(1) If either Form HUD–52822, CIAP Application, *or* the narrative statement on the technical review factors is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing. The Field Office shall immediately notify the HA in writing.

(2) If Form HUD–50071, Certification for Contracts, Grants, Loans, and Cooperative Agreements, or SF–LLL, Disclosure of Lobbying Activities, are required, but missing, *or* Form HUD–2880, Applicant/Recipient Update/Disclosure Form, is missing, *or* there is a technical mistake, such as no signature on a submitted form or the HA failed to address all of the technical review factors, the Field Office shall immediately notify the HA in writing that the HA has 14 calendar days from the date of HUD's notification to submit or correct the deficiency. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If the HA fails to submit or correct the items within the required time period, the HA's application will be ineligible for further processing. The Field Office shall notify the HA in writing immediately after this occurs.

(b) *Eligibility Review.* After the HA's CIAP Application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for processing or processing on a reduced scope.

(1) *Eligibility for Processing.* To be eligible for processing:

(i) *HA Eligibility.* HA has fewer than 250 Public and Indian housing units.

(ii) *Development Eligibility.* The development is either a public housing development, including a conveyed Lanham Act or Public Works Administration development, or a Section 23 Leased Housing Bond-Financed project (BFP).

(iii) *Date of Full Availability (DOFA)/Major Reconstruction of Obsolete Projects (MROP) Funding.* Each eligible development for which work is proposed has reached DOFA at the time of CIAP Application submission. In addition, where funded under MROP after FY 1988, the development/building has reached DOFA or where funded during FYs 1986–1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for Processing on Reduced Scope.* Where the following conditions exist, the HA will be reviewed on a reduced scope:

(i) *Section 504 Compliance.* Where the Section 504 needs assessment identified a need for accessible units, the HA was required to make structural changes to meet that need by July 11, 1992. (''Section 504'' refers to Section 504 of the Rehabilitation Act of 1973.) Where the HA has not completed all required structural changes or obtained a time extension from HUD to July 11, 1995, the HA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements. Refer to PIH Notice 94–56 (HA), dated August 15, 1994.

(ii) *Lead-Based Paint (LBP) Testing Compliance.* Where the HA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the HA is eligible for processing only for Emergency Modernization or work needed to complete LBP testing.

(iii) *FHEO Compliance.* Where the HA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as evidenced by an action, finding or determination as described below, unless the HA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the HA is eligible for processing only for Emergency Modernization or physical work needed to remedy civil rights deficiencies.

(A) A pending proceeding against the HA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of Discrimination is a charge under Section 810(g)(2) of the Fair Housing Act, issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the HA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of HA noncompliance with civil rights statutes and executive orders under § 968.110(a) or § 905.115, or implementing regulations, as a result of formal administrative proceedings, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) A deferral of the processing of applications from the HA imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24

CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 968.110(a) or § 905.115 in a civil action filed against the HA by a private individual, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Selection Criteria and Ranking Factors.* After all CIAP Applications are reviewed for eligibility, the Field Office shall categorize the eligible HAs and their developments into two processing groups, as defined in subparagraph (1) of this paragraph: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. HA developments may be included in both groups and the same development may be in each group. However, the HA is only required to submit one CIAP Application.

(1) *Grouping Modernization Types.*

(i) *Group 1, Emergency Modernization.* Developments having physical conditions of an emergency nature, posing an immediate threat to the health or safety of residents or related to fire safety, and which must be corrected within one year of CIAP funding approval. Funding is limited to physical work items and may not be used for management improvements. Emergency Modernization includes all LBP testing and abatement of units housing children under six years old with elevated blood lead levels (EBLs) and all LBP testing and abatement of HA-owned day care facilities used by children under six years old with EBLs. Group 1 developments are not subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph or the long-term viability and reasonable cost determination in section V(e).

(ii) *Group 2, Other Modernization.* Developments not having physical conditions of an emergency nature and located in HAs which have demonstrated a capability of carrying out the proposed modernization activities. Other Modernization includes: one or more physical work items, where the Field Office determines that the physical improvements are necessary and sufficient to extend the useful life of the development; and/or one or more development specific or HA-wide management work items (including planning costs); and/or LBP testing, professional risk assessment, interim containment, and abatement. Therefore, eligibility of work under Other Modernization ranges from a single work item to the complete rehabilitation of a development. Refer to section I(b)(1)(i) of this Notice regarding modest amenities and improved design. Group 2 developments are subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph and the long-term viability and reasonable cost determination in section V(e).

(2) *Assessment of HA's Management Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, *and* on the performance review under the Public Housing Management Assessment Program (PHMAP) for PHAs or the Administrative Capability Assessment for IHAs, and other information sources, as follows:

(i) *Public Housing.* A PHA has management capability if it is (A) not designated as Troubled under 24 CFR Part 901, PHMAP, or (B) designated as Troubled, but has a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 or has obtained alternative oversight of its management functions.

(ii) *Indian Housing.* An IHA has management capability if it is (A) not designated as High Risk under § 905.135 or (B) designated as High Risk, but has a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A High Risk IHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the goals established in its management improvement plan under § 905.135.

(3) *Assessment of HA's Modernization Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits, as follows:

(i) *Public Housing.* A PHA has modernization capability if it is (A) not designated as Modernization Troubled under 24 CFR Part 901, PHMAP, or (B) designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability which may include through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(ii) *Indian Housing.* An IHA has modernization capability if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, the ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(4) *Technical Processing.* After the Field Office has categorized the eligible HAs and their developments into Group 1 and Group 2, the Field Office shall rate each Group 2 HA on each of the technical review factors in subparagraph (5) of this paragraph. With the exception of the technical review factor of ''extent and urgency of need'', a Group 2 HA is rated on its overall HA application and not on each development. For the technical review factor of ''extent and urgency of need,'' each development for which funding is requested in the CIAP Application by a Group 2 HA is scored; the development with the highest priority needs is scored the highest number of points, which is then used for the overall HA score on that factor. *High priority needs* are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines.

(5) *Technical Review Factors.* The technical review factors for assistance are:

Technical review factors	Maximum points
Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines	40
HA's modernization capability	15
HA's management capability	15
Extent of vacancies, where the vacancies are not due to insufficient demand	10
Degree of resident involvement in HA operations	5
Degree of HA activity in resident initiatives, including tenant opportunity, economic development, and drug elimination efforts	5
Degree of resident employment through direct hiring or contracting or job training initiatives	5
Local government support for proposed modernization	5
Total Maximum Score	100

(6) *Bonus points.*

(i) For Public Housing only, the Field Office shall provide up to 5 bonus points for any PHA that can demonstrate that it has obtained funds from a non-HUD source to improve or support the modernization activities or the general operation of the PHA. Non-HUD sources of funding may include: local government, over and above what is required under the Cooperation Agreement for municipal services such as police and fire protection and refuse collection; private non-profit organizations; or other public and private entities. To qualify for the bonus points, the PHA shall identify the entity, the amount of funds being obtained, and the purpose of the funding.

(ii) For Public Housing only, the Field Office shall provide up to 2 bonus points for any PHA that can demonstrate that it has awarded contracts, including subcontracts, to minority business enterprises (MBEs) or

women's business enterprises (WBEs) within the last three years. Such affirmative action is required by Executive Orders 11625 and 12432 for MBEs and by Executive Order 12138 for WBEs. To qualify for the bonus points, the PHA shall identify the contractor or the subcontractor, the dollar value of the contract or subcontract, and the date of award.

(7) *Rating and Ranking.* After rating all Group 2 HAs on each of the technical review factors and providing any bonus points as set forth in subparagraph (6) of this paragraph, the Field Office shall rank each Group 2 HA based on its total score, list Group 2 HAs in descending order and identify other Group 2 HAs with lower ranking applications, but with high priority needs. The Field Office shall consult with Headquarters regarding any identified FHEO noncompliance.

(d) *Joint Review.* The purpose of the Joint Review is for the Field Office to discuss with the HA the proposed modernization program, as set forth in the CIAP Application, and determine the size of the grant, if any, to be awarded.

(1) The Field Office shall select HAs, including all Group 1 HAs, for Joint Review so that the total dollar value of all proposed modernization recommended for funding exceeds the assignment amount by at least 15%. This will preserve the Field Office's ability to adjust cost estimates and work items as a result of Joint Review.

(2) The Field Office shall notify in writing each HA whose application has been selected for further processing as to whether the Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). An HA will not be selected for Joint Review if there is a duplication of funding (refer to section V(g)). The Field Office shall notify in writing each HA not selected for Joint Review and the reasons for non-selection.

(3) Where the HA has not included some of its developments in the CIAP Application, the Field Office may not, as a result of Joint Review, consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs.

(4) The HA shall prepare for the Joint Review by preparing a draft CIAP budget, and reviewing the other items to be covered during the Joint Review, such as the need for professional services, method of accomplishment of physical work (contract or force account labor), HA compliance with various Federal statutes and regulations, etc. If conducted on-site, the Joint Review may include an inspection of the proposed physical work.

(e) *HUD Awards.* After all Joint Reviews are completed, the Field Office shall adjust the HAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, FHEO review, and environmental reviews (refer to paragraph (h)). Such adjustments are necessary where Joint Review determines that actual Group 1 emergencies and Group 2 high priority needs, HA priorities, or cost estimates vary from the HA's application. Such adjustments may preclude the Field Office from funding all of the higher ranked HA applications in order to accommodate the funding of high priority needs. However, where the information obtained from Joint Reviews, FHEO review, and environmental reviews does not substantially alter the information used to establish the rankings before Joint Review, the Field Office shall make funding decisions in accordance with its rankings. After Congressional notifications, the Field Office shall announce the HAs selected for CIAP grants, subject to their submission of an approvable CIAP budget and other required documents.

(f) *HA Submission of Additional Documents.* After field Office funding decisions, the Field Office shall provide written notification to the HA of funding approval, subject to HA submission of the following documents within the time frame prescribed by the Field Office:

(1) *Form HUD–52825, CIAP Budget/ Progress Report,* which includes the implementation schedule(s), in an original and two copies.

(2) *Form HUD–50070, Certification for a Drug-Free Workplace,* in an original only.

(3) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(g) *ACC Amendment.* After HUD approval of the CIAP budget, HUD and HA shall enter into an ACC amendment in order for the HA to obtain modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(h) *Environmental review.* The Field Office shall review the environmental impact of all modernization activities under Part 50, in accordance with the provisions of Parts 905 and 968. The Field Office may obtain the information required to conduct the environmental review during Joint Review. The HA shall provide any documentation to the Field Office that it needs to carry out its review under NEPA. After all Joint Reviews are conducted, the Field Office shall complete the environmental reviews before funding decisions are made and announced and before HAs are invited to submit CIAP budgets. Therefore, in requesting CIAP budgets, the Field Office shall specify any HA modification or elimination of activities or expenditures that the Field Office has determined, after review under the National Environmental Policy Act (NEPA) or related laws, to have an unacceptable environmental impact. Upon approval of the CIAP budget, the Field Office shall send an approval letter to the HA which includes notification that HUD has complied with its responsibilities under 24 CFR 905.120(a) or 24 CFR 968.110(c) and (d) before entering into an ACC amendment with the HA.

(i) *Declaration of Trust.* Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the HA is obliged to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD has determined that its interest in Mutual Help units is sufficiently protected without the further requirement of a Declaration of Trust; therefore, a Declaration of Trust is not required for Mutual Help Units.

(j) *''Fast Tracking'' Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA applications may be submitted and processed at any time during the year when funds are available. The Field Office shall ''fast track'' the processing of these emergency applications so that fund reservation may occur as soon as possible.

V. Other Program Items

(a) *Turnkey III Developments.*

(1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization which are not the responsibility of the homebuyer families *and* which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, eligible costs include management improvements under the modernization type of Other Modernization. Turnkey III units which have been paid off, but not conveyed, are eligible for funding, but if funded, the modernization work must be completed before conveyance. The cost of the physical and management improvements shall not increase the purchase price and amortization period for the homebuyer families.

(2) *Ineligible Costs.* Nonroutine maintenance or replacements, dwelling additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception of vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of subparagraph (1) of this paragraph, an HA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a non-homebuyer family. An HA that intends to use funds under this paragraph must identify in its CIAP Application, the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an HA must certify that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III Program; and the HA has homebuyers who both are eligible for homeownership, in accordance with the regulatory requirements, and have demonstrated their intent to be placed into

each of the Turnkey III units proposed for Other Modernization.

(ii) Before an HA may be approved for Other Modernization of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

(b) *Mutual Help Developments.* Mutual Help developments are eligible for the same physical and management improvement costs as are rental developments. Mutual Help units which have been paid off, but not conveyed, are eligible for funding, but if funded, the modernization work must be completed before conveyance.

(c) *Professional Risk Assessment for LBP.* A set-aside may be made available for LBP professional risk assessments under a separate NOFA and Processing Notice. HAs with pre-1980 family developments are strongly encouraged to apply for these funds to conduct LBP professional risk assessments.

(d) *In-Place Management (Interim Containment of LBP).* Where the results of the LBP professional risk assessment recommend that the HA undertake in-place management measures, the HA is strongly encouraged to apply for CIAP funds to carry out such measures. However, if the HA is not successful in obtaining CIAP funds for in-place management measures, the HA may request a budget revision of previously approved, but unobligated CIAP funds to accomplish such measures. Where the HA had a CIAP budget revision approved for this purpose in FY 1994, the HA may request FY 1995 CIAP funds to complete the items which were eliminated as a result of the budget revision.

(e) *Long-Term Viability and Reasonable Cost.*

(1) *Long-Term Viability.* On Form HUD–52822, CIAP Application, the HA certifies whether the developments proposed for modernization have long-term viability, including prospects for full occupancy. If, during Joint Review, the HA or Field Office believes that a particular development may not have long-term viability, the Field Office shall make a final viability determination. If the Field Office determines that a development does not have long-term viability, the Field Office shall only approve Emergency Modernization or nonemergency funding necessary to maintain habitability until the demolition or disposition application is approved and residents can be relocated. In making the final viability determination, the Field Office shall consider whether:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to blend the development in with the design and architecture of the neighborhood; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(iii) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(iv) There are no practical alternatives for replacement housing.

(2) *Reasonable Cost.* During the Joint Review, the Field Office shall determine reasonable cost for the proposed work, using one of the following methods: (i) unfunded hard cost of 90 percent or less of computed Total Development Cost (TDC), which is easier to apply when comprehensive-type modernization is proposed; or (ii) the reasonableness of the estimated cost of individual work items, using national indices, such as R.S. Means Index, the Dodge Report or Marshall and Swift, adjusted to reflect local conditions and actual experience, which is easier to apply when piecemeal-type modernization is proposed. No computation of the TDC is required where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development.

(f) *Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities.* On August 24, 1990, the Department issued HUD Notice PIH 90–39 (PHA), concerning the eligibility for funding under the Performance Funding System of dwelling units used to promote economic self-sufficiency services for residents and anti-drug programs. CIAP funds may be used to convert units for these purposes. Also refer to the Family Self-Sufficiency Program Guidelines (56 FR 49592, September 30, 1991).

(g) *Duplication of Funding.* The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program, shall not be funded by CIAP.

VI. Application Deadline Date and Summary of FY 1995 CIAP Processing Steps

The deadline date for submission of the FY 1995 CIAP Application will be established in the NOFA to be published at a future date. Dates for other processing steps will be established by each Field Office to reflect local workload issues.

Summary of Processing Steps

1. HA submits CIAP Application.
2. Field Office conducts completeness review and requests corrections to deficient applications.
3. HA submits corrections to deficient applications within 14 calendar days of notification from Field Office.
4. Field Office conducts eligibility review and technical review (rating and ranking) and makes Joint Review selections.
5. Field Office completes Joint Reviews, environmental reviews and FHEO review.
6. Field Office makes funding decisions and forwards Congressional notifications to Headquarters.
7. Congressional notification is completed and Field Office notifies HA of funding decisions.
8. HA submits additional documents as required in section IV(f).
9. Field Office completes fund reservations and forwards ACC amendment to HA for signature and return.
10. Field Office executes ACC amendment and HA begins implementation.

VII. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment will be made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with issuance of the FY 1995 NOFA for this program. The Finding of No Significant Impact will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, DC 20410.

(b) *Federalism Impact.* The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this Notice 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 Notice is not subject to review under the Order.

(c) *Impact on the Family.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this Notice will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(d) *Accountability in the Provision of HUD Assistance.* The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR Part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. On January 16, 1992, the Department published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under the NOFA to be published as follows:

(1) *Documentation and Public Access.* The Department will ensure that documentation and other information regarding each application submitted pursuant to the NOFA to be published are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the

assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. In addition, HUD will include the recipients of assistance pursuant to the NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *HUD Responsibilities—Disclosures.* The Department will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with the NOFA to be published. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. (See 24 CFR Part 12, Subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Prohibition Against Advance Information on Funding Decisions.*

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR Part 4, will apply to the funding competition to be announced under the separately published NOFA. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. Also refer to a final rule amending Part 4 published in the **Federal Register** on November 19, 1993 (58 FR 61016), regarding the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics at (202) 708–3815 (voice), (202) 708–1112 (TDD). These are not toll-free numbers. The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(f) *Prohibition Against Lobbying of HUD Personnel.*

Section 112 of the HUD Reform Act added a new Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD regulations implementing Section 13 are at 24 CFR Part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the regulation, particularly the examples contained in Appendix A of the rule.

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of ''person'' to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions regarding the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451, Seventh Street, S.W., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice); (202) 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD Office.

(g) *Prohibition Against Lobbying Activities.*

The use of funds awarded under the NOFA to be published is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

If the amount applied for is greater than $100,000, the certification is required at the time application for funds is made that federally appropriated funds are not being or have not been used in violation of the Byrd Amendment. If the amount applied for is greater than $100,000 and the HA has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR Part 87 (Byrd Amendment), the submission also must include the SF–LLL, Disclosure of Lobbying Activities. The HA determines if the submission of the SF–LLL is applicable.

(h) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1989 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0044.

VIII. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

Dated: January 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6562 Filed 3–16–95; 8:45 am]

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Federal Register

Friday
March 17, 1995

Part IV

Department of Health and Human Services

Administration for Children and Families

Early Head Start Program Grant Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS–93600.952]

Early Head Start Program Grant Availability

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of financial assistance to be competitively awarded to current Head Start programs—including Head Start Parent and Child Centers and Comprehensive Child Development programs—and other public and non-profit private entities to provide child and family development services for low-income families with children under age three and pregnant women.

SUMMARY: Section 645A of the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*, requires that, beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants competitively to agencies and organizations to implement programs which we call ''Early Head Start.'' These programs will provide early, continuous, intensive, and comprehensive child development and family support services on a year-round basis to low-income families with children under age three and pregnant women. The purpose of the program is to enhance children's physical, social, emotional, and intellectual development; to assist parents in fulfilling their parental roles; and to help parents move toward self-sufficiency. Thus, the goals for Early Head Start are to:

- Promote the physical, cognitive, social and emotional growth of infants and toddlers and prepare them for future growth and development;
- Support parents—mothers, fathers, and guardians—in their role as primary caregivers and educators of their children, and in meeting family goals and achieving self-sufficiency across a wide variety of domains;
- Strengthen community supports for families with young children; and
- Develop highly-trained, caring and adequately compensated program staff, because the quality of staff and their relationships with children and parents are critical to achieving all the other goals.

DATES: The closing date for submission of applications is May 31, 1995.

ADDRESSES: Applications may be mailed to: Early Head Start Program, Ellsworth Associates, Inc., 3030 Clarendon Blvd., Suite 240, Arlington, Virginia 22201.

Hand delivered applications are accepted at the above address during the normal working hours of 8 a.m. and 4:30 p.m., Monday through Friday, on or before the closing date.

FOR FURTHER INFORMATION: For questions related to the Program Announcement, please contact the ACYF Operations Center, Technical Assistance Team at 1–800–351–2293. Staff at this center will answer questions regarding the application requirements or refer you to the appropriate contact person in ACYF for programmatic questions.

For a copy of the application kit, or for another copy of the program announcement please call or fax your request to the ACYF Operations Center at 1–800–351–2293 (phone) or 1–800–351–4490 (fax).

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Table of Contents

This program announcement is divided into five sections:

- Part I is an introductory section which contains the history and background for the Early Head Start program and the principles and program description that will guide the development, implementation and operation of the programs.
- Part II contains key program information such as a description of eligible applicants, project periods, applicable Head Start regulations, and Early Head Start as a learning community.
- Part III presents requirements for information that must be included in each application.
- Part IV presents the criteria upon which applications will be reviewed and evaluated.
- Part V contains instructions for preparing the Fiscal Year 1995 application. This section notes that the Commissioner of the Administration on Children, Youth, and Families, depending on the availability of funds and an adequate number of acceptable applications, may choose to fund the Fiscal Year 1996 cohort of programs out of the pool of applications submitted as a response to this program announcement.

Appendix A includes the relevant forms necessary for completing the application.

Appendix B lists the Single Points of Contact for each State and Territory.

Appendix C is The Statement of the Advisory Committee on Services for Families with Infants and Toddlers which guided the development of this program announcement and will be referred to throughout.

An application kit containing applicable Head Start Regulations, State Contact lists (e.g. Part H Lead Agency Coordinators) and other useful information must be obtained by applicants. (See address listed earlier in this announcement.)

B. Program Purpose

With the reauthorization of the Head Start Act in 1994, Congress established a new program for low income families with infants and toddlers and pregnant women which we are calling Early Head Start. Beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants to competing agencies and organizations to implement ''Early Head Start'' to provide early, continuous, intensive, and comprehensive child development and family support services.

In creating this program, the Congress acted upon evidence from research and practice which illustrates that high quality programs enhance children's physical, social, emotional, and cognitive development; enable parents to be better caregivers and teachers to their children; and help parents meet their own goals, including economic independence. Such programs answer an undeniable need. As pointed out in The Report of the Carnegie Task Force on Meeting The Needs of Young Children, many of the 12 million children under three and their families in the United States today face a ''quiet crisis.'' The numerous indicators of this crisis include: One in four infants and toddlers live in families with incomes below the poverty line; nine out of every thousand infants die before the age of one; and, more than five million children under three receive child care from other adults while their parents work, much of that care is of poor quality.

The Early Head Start program will provide resources to community programs to address such needs and to achieve the purposes set forth by Congress. The local programs funded through Early Head Start will also operate as a national laboratory to demonstrate the impact that can be gained when early, continuous, intensive and comprehensive services are provided early on to pregnant women and very young children and their families.

Programs participating in this demonstration effort will:

- Provide early, individualized child development and parent education

services to low-income infants and toddlers and their families according to a plan developed jointly by the parents and staff;

- Provide these services through an appropriate mix of home visits, experiences at the Early Head Start center, and experiences in other settings such as family- or center-based child care;
- Provide early opportunities for infants and toddlers with and without disabilities to grow and develop together in warm, nurturing and inclusive settings;
- Ensure that the Early Head Start center is a welcoming setting for families in the community;
- Respond to the needs of families, including the need for full-time child care for working families;
- Connect with other service providers at the local level to ensure that a comprehensive array of health, nutrition, and other services is provided to the program's pregnant women, very young children, and their families;
- Recruit, train, and supervise high quality staff to ensure the kind of warm and continuous relationships between caregivers and children that are crucial to learning and development for infants and toddlers;
- Ensure parent involvement in policy and decision making, similar to parent involvement in preschool Head Start programs;
- Coordinate with local Head Start programs in order to ensure continuity of services for these children and families;
- Ensure quality by focusing on all four cornerstones of successful early childhood programs: Child development, family development, community building, and staff development; and
- Participate actively in a research and evaluation effort to learn from the Early Head Start experience.

C. History and Background

1. Legislation

In May 1994 the President signed into law the bipartisan Head Start Reauthorization Act of 1994. This reauthorization established within the Head Start Bureau a new program for low-income pregnant women and families with infants and toddlers. The reauthorization sets aside funds from the overall Head Start budget for the next four years at a rate of three percent in FY 1995; four percent in FY 1996 and 1997; and five percent in FY 1998. Consolidated into the new initiative were the Parent and Child Centers Program and the Comprehensive Child Development Program.

This section of the legislation had a number of sources, including the recommendations of The Advisory Committee on Head Start Quality and Expansion, as well as recent lessons from research and practice.

2. The Advisory Committee on Head Start Quality and Expansion

In June 1993, the Secretary of the Department of Health and Human Services formed an Advisory Committee to look at Head Start quality and expansion. The recommendations of that committee centered around:

- Striving for excellence in staffing, management, oversight, facilities, and research;
- Expanding to better meet the needs of children and families; and
- Forging new partnerships with communities, schools, the private sector, and other national initiatives.

Included in the report was a recommendation that the Department develop a new initiative for expanded Head Start supports to families with infants and toddlers, as well as convene a high-level committee charged with developing guidelines for this new effort. This recommendation was fueled by relevant research findings and recognition in the field that a good deal more could be accomplished with earlier more sustained support for very young children and their families.

3. Relevant Research

Findings from more than three decades of research in child and family development illustrate that the time from conception to age three is critical for human development. The basic cognitive, social, and emotional foundation is established in these early years. The research also indicates that for infants and toddlers to develop optimally, they must have healthy beginnings and the continuity of responsive and caring relationships. Together, these supports help promote optimal cognitive, social, emotional, physical, and language development. When these supports are missing, the immediate and future development of the child may be compromised. Fortunately, recent research identifies characteristics of effective programs that enhance both child and family development. This growing body of knowledge provides a foundation upon which the Early Head Start program is based.

A more detailed discussion about the research in maternal and infant health, child-caregiver relationships, and characteristics of successful programs can be found in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers which is included as Appendix C.

4. Precursor Program Experiences

In enacting Early Head Start, Congress was building on lessons learned through Federal, State, local and community programs that serve some of our country's very young children and their families.

Most notable among the early Federal efforts include the following:

- Maternal and Child Health Services Block Grant has its roots in Title V of the Social Security Act which was enacted in 1935. It is administered by the Maternal and Child Health Bureau (MCHB) of the Public Health Service which provides leadership for building the infrastructure for health care services delivery to all mothers and children in the U.S., with particular responsibility for serving those low-income or isolated populations who would otherwise have limited access to care.
- The Parent and Child Centers Program (PCC) was established in 1967 to provide an array of services for pregnant women, infants/toddlers, parents, and families as a whole. There are currently 106 PCC's across all 50 States, the District of Columbia and Puerto Rico. Services include health, education, personal and interpersonal development, and family assistance.
- The Migrant Head Start program was established in 1969 in order to meet the needs of mobile farmworker children and their families. The program provides age appropriate infant, toddler and preschool programming, full-day services (8 to 12 hours per day), and full week services (five to six days per week). These services are offered in center-based and family child care settings during agricultural seasons. There are currently 76 Migrant Head Start programs operating in 35 states. Infant and toddlers comprise over 40 percent of the children served annually.
- Child and Family Resource Program (CFRP) operated as a demonstration from 1973 to 1983. Ten CFRP programs linked community resources in efforts to enhance families abilities to provide safe, stable, nurturing environments for their children.
- Part H of what is now known as the Individuals with Disabilities Education Act was initiated in 1986 as an early intervention program for children birth to three who have or are at risk for developmental disability. Part H supports comprehensive, statewide programs which identify and coordinate needed services within the context of a family-centered services delivery model.

• The Comprehensive Child Development Program (CCDP) was enacted in 1988 to provide and coordinate a wide range of services to children and families involving child development, health care, education, economic self-sufficiency, mental health, substance abuse treatment and prevention and other services to strengthen the home and family.

• Even Start Literacy Program, administered by the Department of Education, integrates early childhood education and adult education for parents into a unified program.

• Healthy Start Initiative started in 1991 as a demonstration program to combat infant mortality through community coalitions.

In addition to these Federal efforts, several States and foundations are focusing on the special needs of very young children and their families. Among the States active in this area are Colorado, Kentucky, Maryland, Minnesota, Missouri and Vermont. Carnegie and Ford are among the foundations addressing the needs of pregnant women and families with infants and toddlers.

D. Consultation

In the statute establishing the new program which we call Early Head Start, Congress called on the Secretary to develop program guidelines in consultation with experts in early childhood development, experts in health, and experts in family services; and taking into consideration the knowledge and experience gained from other early childhood programs including the Comprehensive Child Development Programs, Head Start Parent Child Centers and Migrant Head Start programs that serve large numbers of infants and toddlers. As a result, the Secretary formed the Advisory Committee on Services for Families with Infants and Toddlers. The Committee was charged with advising the Department on the development of program approaches for the initiative. In September 1994, the Advisory Committee unanimously agreed to a statement that sets forth the vision, goals, principles, and program cornerstones for Early Head Start (the Statement, which includes the Advisory Committee membership list, is included as Appendix C).

In addition, Federal staff conducted approximately 30 focus groups during the summer of 1994 to hear from parents, practitioners, researchers, advocates, and representatives of professional organizations. Further, Federal staff met with or received materials and recommendations from a number of other parents, practitioners, and researchers. The suggestions, guidance, and information received through this consultation process helped shape the development of this program announcement.

E. Principles Recommended by the Field

The Advisory Committee on Services for Families with Infants and Toddlers identified nine principles that are characteristic of successful programs for families with very young children. These principles are consistent with the themes that emerged from the broader consultation conducted by the Department. Therefore, applicants are expected to design their programs around these principles:

1. *High Quality:* Programs will ensure high quality in both the services provided to children and families directly, and the services provided through referral. Programs will recognize that the conception-to-three age period is unique both in the rate of development and in the way young children's physical and mental growth reflects and absorbs experiences with caregivers and the surroundings. Because of this, the experiences and environments need to be of highest quality to promote child development.

2. *Prevention and Promotion:* Recognizing that windows of opportunity open and close quickly for very young children and their families, programs will seek out opportunities to promote the physical, social, emotional, cognitive and language development of young children and families before conception, prenatally, upon birth, and during the early years. Program staff will seek to prevent and detect problems at their earliest stages, rallying the services needed to help the child and family anticipate and overcome problems before they interfere with healthy development.

3. *Positive Relationships and Continuity:* Programs will support and enhance strong, caring, continuous relationships among the child, parents, family, and caregiving staff. Programs will support the mother-child, father-child bond by recognizing each parent as his or her child's first and primary source of love, nurturance and guidance. Programs will ensure that relationships between caregiving staff and young children support infant and toddler attachment to a limited number of skilled and caring individuals, thus maintaining relationships with caregivers over time and avoiding the trauma of loss experienced with frequent turnover of key people in the child's life.

4. *Parent Involvement:* Programs will ensure the highest level of partnership with parents, both mothers and fathers. Programs will support parents as primary nurturers, educators, and advocates for their children; assure that each parent has an opportunity for an experience that supports his or her own growth and goals, including that of parenting; encourage independence and self-sufficiency for parents; and provide a policy-making and decision-making role for parents.

5. *Inclusion:* Programs will develop services and create an environment which builds upon and responds to the unique strengths and needs of each child and family. Further, programs will support participation in community life by young children with disabilities and their families; families of very young children with significant disabilities will be fully included in all program services.

6. *Culture:* Programs will demonstrate an understanding of, respect for, and responsiveness to the home culture of children and families as culture is the context for healthy identity development in the first years of life.

7. *Comprehensiveness, Flexibility, Responsiveness, and Intensity:* Programs will respond in flexible ways to the unique strengths, abilities, and needs of the children, families and communities they serve. Developmental opportunities provided to each infant and toddler will address the whole child and be continually adapted to keep pace with his or her developmental growth. Programs also need to be responsive to the distinct needs and experiences of parents whose children are disabled and those parents who have disabilities.

8. *Transition:* Programs will be responsible for ensuring the smooth transition of children and their families into Head Start or other preschool programs which are of high quality and provide consistent and responsive caregiving.

9. *Collaboration:* Recognizing that no one program will be able to meet all of a child's and family's needs, programs will build strong connections to other service providers and to community sources of support for families. These efforts will foster a caring, comprehensive and integrated community-wide response to families with young children, maximize scarce financial resources, and avoid duplication of agency effort.

These principles (explained in more detail) are included in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers which is attached as Appendix C.

F. Program Description

In addition to the principles outlined above, a description of the Early Head Start program also emerged during consultation with the field. The Advisory Committee members set forth the formal framework for the program which includes four cornerstones: child development; family development; community building; and staff development.

1. Child Development

To develop fully, children need individualized support that honors the unique characteristics and pace of their physical, social, emotional, cognitive and language development. Critical to this development are the promotion of child health; positive relationships between the child and parents and other significant caregivers; opportunities for children's active engagement in appropriately stimulating environments; and enhancement of each parent's knowledge about the development of their child within healthy, safe, environments. The services that programs must provide to support the child development cornerstone include:

- High quality early education services provided both in and out of the home in a range of developmentally appropriate settings for infants and toddlers;
- Home visits (especially for families with newborns and other infants, as needed);
- Parent education, including parent-child activities;
- Comprehensive health and mental health services for children; and
- Part- and full-day child care services, as needed by children and families (the ACF does not expect Early Head Start grantees to pay for off-site child care but instead envisions the role of the grantee being a broker to help the family identify and access child care services from appropriate providers in the community as needed); the Early Head Start program must assume responsibility for ensuring that the child care settings meet standards for high quality, developmentally appropriate care.

In addition, Early Head Start programs would be responsible for helping the family identify and access the services of a consistent health professional who can provide ongoing care for the family, child and pregnant woman. Further, Early Head Start programs would be responsible for coordinating with programs providing services in accordance with Part H of the Individuals with Disabilities Education Act so that children and families served by these two programs can experience a seamless system of services.

2. Family Development

Healthy child development depends on the ability of parents and families to support and nurture children, while at the same time meeting other critical social and economic needs. Therefore, programs must work to help parents set and achieve goals for themselves and their children through individualized family development plans, which are collaboratively designed and updated by families and staff, and are responsive to the goals and ideals of the families. When families are served by additional programs which also require an individualized family development/service plan, such as Part H of the Individuals with Disabilities Education Act and family employability plans, then a single coordinated plan should be developed so families experience a seamless system of services.

The types of services that programs must provide directly or through referral include:

- Ongoing support to parents, through case management, peer support groups, or other approaches;
- Child development information;
- Health services, including services for women prior to, during, and after pregnancy;
- Mental health services;
- Services to improve health behavior such as smoking cessation and substance abuse treatment;
- Services to adults to support progress towards economic independence, such as adult education and basic literacy skills, job training, assistance in obtaining income support, food, and decent, safe housing, and emergency cash or in-kind assistance; and
- Transportation to program services.

Programs also must provide directly opportunities for parent involvement in the program so that parents can be involved as decision-makers, volunteers, and/or employees. Additional services not listed above, but identified by families through community assessments and mappings, may be provided either directly or through referral at local option.

3. Community Building

Children develop within the context of the family and the family develops within the context of the community. Therefore, to support children's development, Early Head Start must establish collaborative relationships with other community providers and strength-building organizations to create an environment that shares responsibility for the healthy development of its children and their families.

The goal of these community relationships will be three-fold: Increasing access to high quality services for program families; assuring that the program's approach to serving families with infants and toddlers fits into the existing constellation of services in the community so that there is a coherent, integrated approach to supporting families with very young children; and encouraging systemic improvements in service delivery for all the families in a community.

All programs will be required to conduct an in-depth assessment of existing community resources and needs and engage in an ongoing collaborative planning process with a range of stakeholders, including parents and residents of the community. If the community recently conducted such an assessment, the program would be able to use the results from that study and then proceed with the collaborative planning process.

4. Staff Development

Programs are only as good as the individuals who staff them. Thus staff development will be a key element of Early Head Start programs.

To ensure the recruitment and development of high quality staff, all programs will be required to:

- Select staff who, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide high quality, comprehensive, inclusive, culturally appropriate, and family-centered services to young children and their families;
- Select staff who are capable of entering into one-to-one caregiving relationships with infants and toddlers, and caring, respectful and empowering relationships with families and other coworkers;
- Select program directors who possess the above characteristics and are highly skilled administrators who exemplify leadership qualities such as integrity, warmth, intuition and holistic thinking;
- Provide ongoing staff training, supervision and mentoring for both line staff and supervisors that reflects an interdisciplinary approach and an emphasis on relationship building and employs techniques and opportunities for practice, feedback and reflection;
- Provide training so staff are ''cross-trained'' in the areas of child development, family development and community building, in addition to the areas of home visiting, caregiving

relationships, effective communication with parents, family literacy, healthy/safe environments and caregiving practices, early identification of unhealthy behaviors or health problems, service coordination, and the provision of services and support to diverse populations, including families and children with disabilities and developmental delays; and

- Recognize that high quality performance and development occur when they are linked to rewards such as salary, compensation, and career advancement.

These cornerstones (explained in more detail) are included in the Statement of the Advisory Committee on Services for Families with Infants and Toddlers which is attached as Appendix C. Applicants who become Early Head Start grantees will be expected to build their program around these four cornerstones.

Part II. Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 et seq.

B. Eligible Applicants

Those who may apply to become an Early Head Start program include: Entities operating Head Start programs and other public entities and nonprofit private entities capable of providing community-based child and family services that are consistent with recognized best practices and other requirements as established by the Secretary. Priority will be given to entities with a record of providing early, continuous, and comprehensive child and family development services. In awarding grants to eligible applicants, the Secretary shall ensure an equitable national geographic distribution of the grants and award grants to applicants proposing to serve communities in rural areas and to applicants proposing to serve communities in urban areas.

C. Eligible Participants

Persons who may participate in the Early Head Start program include pregnant women and families with children under age three who meet the income criteria specified for families in the Head Start regulations (See Part II, Section G). The report from Congress discussing the creation of this program encouraged that participants in programs funded through this initiative should be identified while pregnant or while their children are infants.

While Early Head Start programs will be targeted primarily toward families who have incomes at or below the poverty line or who are eligible for public assistance, regulations permit up to 10 percent of children in local programs to be from families which do not meet these low-income criteria. Head Start regulations also require that a minimum of 10 percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of services and activities in inclusive settings with their non-disabled peers and to receive individualized services.

As a comprehensive family development program, Early Head Start will be expected to assess the strengths and needs of the whole family and develop strategies for ensuring services are available. For example, grantees would be responsible for recognizing the child care needs of older siblings (i.e., children in the family age three or older) but would not be expected or authorized to pay for such services. Instead, the role of Early Head Start would be to work with the family and community providers to identify programs where the older sibling may be served.

D. Target Populations

There will be no required target populations other than that specified in Part II, Section C. However, applicants may choose to focus on special populations such as teen parents or design a program linked to welfare reform initiatives if they wish. In future years, the ACF may look at programs focusing on these populations for more in-depth study and evaluation.

E. Project Period, Funding and Project Sizes

A total of approximately $17 million in ACF funds will be available for funding approximately 15–25 new Early Head Start programs in FY 1995. Applicants will be required to enroll at least 75 families. In order to fund as many different projects as possible, the ACF does not intend to fund any applicant to serve more than 150 families, unless it is the judgment of the selecting official that a higher enrollment level will enable the ACF to better meet the stated purposes of Early Head Start. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five-years. Applications for continuation grants funded under these awards beyond the first one-year budget period but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. Continuation funds will be available to serve eligible families who were initially enrolled and eligible families which replaced starting families who left the program during any single year.

Parent and Child Center Programs and Cohort I of the Comprehensive Child Development Programs (Cohort I) are eligible to apply for this money according to the terms of this announcement but are not required to do so.

Note: The statute creating Early Head Start allows Cohort II of the Comprehensive Child Development Programs (Cohort II) to continue in their demonstration phase and receive funding for the duration of the project period.

If they do not choose to apply, they will generally continue to receive financial assistance in fiscal years 1995, 1996, and 1997 as permitted by section 645A(e) of the Act. When a Parent and Child Center Program or Cohort I competes successfully for an Early Head Start grant, the current grant will be replaced by the new Early Head Start grant. Thus, the grantee's current base funding will be folded into the new award and its current project period will be replaced by a new Early Head Start project period that extends a full five years. If a Parent and Child Center Program or a Cohort I chooses to compete for Early Head Start and does not succeed, the Parent and Child Center Program or Cohort I will generally continue to receive financial assistance through FY 1997 and may recompete to become an Early Head Start program as new funds become available in FY 1996, 1997, and 1998. Parent and Child Center Programs and Cohort I and Cohort II of the Comprehensive Child Development Program are receiving additional information about the terms affecting them as a result of this program announcement.

Allowable costs for developing and administering an Early Head Start program may not exceed 15 percent of the total approved costs of the program. Costs classified as development and administrative costs are those costs related to the overall management of the program. Additional information pertaining to limitations of costs on development and administration of Early Head Start programs can be found in Head Start Grants Administration regulation 45 CFR 1301.32, Limitations on Costs of Development and

Administration of a Head Start Program, which is available in the application kit.

All programs will be thoroughly reviewed at the end of the first year to determine their suitability for receiving continued funding. Programs will be expected to submit an ongoing operation plan and revised budget. Federal staff also may ask for additional material as part of the review.

Given the importance of planning, selecting high quality staff and setting in place training mechanisms, and coordinating with other programs within the community, we expect that programs will spend some portion of the first year focusing on start-up activities. Programs are strongly encouraged to begin serving children and families within the first year. Programs should plan to be fully operational no later than October 1, 1996. Because the first year is unlikely to include 12 months of full operation, it is assumed that first year budgets will be lower than budgets for future years.

Subject to the availability of additional resources in FY 1996 and to the number of acceptable applications received as a result of this program announcement, the selecting official may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

F. Required Match

Grantees that operate Early Head Start programs must provide at least 20 percent of the total approved costs of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, fairly evaluated, including facilities, equipment or volunteer services. Therefore, a project requesting $100,000 in Federal funds (based on an award of $125,000 per budget period), must include a match of at least $25,000 (20 percent of total project costs). Applicants are encouraged to provide more than the minimum 20 percent non-Federal share.

In certain instances, the requirement for a 20 percent non-federal match may be waived in part or in whole, if the circumstances described in Section 640(b) of the Head Start Act exist. This section states that ''For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection; (2) the impact of the cost the Head Start agency may incur in initial years it carries out such program; (3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program; (4) whether the Head Start agency is located in a community adversely affected by a major disaster; and (5) the impact on the community that would result if the Head Start agency ceased to carry out such program.''

G. Applicable Head Start Standards

Agencies that receive funding through this announcement must adhere to those standards set forth in certain regulations that govern Head Start programs in addition to Department of Health and Human Services regulations that govern discretionary grants generally. The relevant Head Start regulations are: Head Start Grants Administration, 45 CFR part 1301; Head Start Program Performance Standards, 45 CFR part 1304; and Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start, 45 CFR part 1305.

There are a number of specific provisions in the foregoing Head Start regulations that relate only to children ages three to five. For example, the Head Start Performance Standards, Subpart B—Education Services in large part describes services that are to be provided to older preschool children and are not appropriate for children under age three. As is currently the case for Head Start Parent and Child Center programs and Migrant Head Start programs that serve children under three years of age, such provisions do not apply to Early Head Start programs.

New Performance Standards for Head Start programs are currently being developed. After a period of public comment, this regulation will be issued in final form in FY 1996 when agencies selected to become Early Head Start programs are beginning to provide services. At that time, programs will be expected to comply with the Performance Standards, as applicable under the time frames specified in the regulation.

Copies of the current applicable Head Start regulations are available in the application kit.

H. Early Head Start as a Learning Community

1. Overview

On both the local and national level, Early Head Start is envisioned as a learning community for how quality services should be delivered to pregnant women and families with infants and toddlers. Thus, continuous improvement, evaluation, research and dissemination activities play a critical role in this initiative. These activities include, but are not limited to:

- Continuous review and measurement of program processes to determine progress toward stated objectives and for the purpose of program improvement;
- Studies of program processes including services offered to and received by families and descriptions of how the services are delivered;
- Qualitative studies of individual families and programs;
- Studies of child, family, program and community variables that contribute to program outcomes;
- Studies of program quality and the relationship of quality to program outcomes;
- Studies of program variations and their relationship to impacts;
- National impact studies, conducted by a national contractor;
- Establishment of longitudinal research in a sample of Early Head Start national impact study sites; and
- Documentation of the program models and development of materials for dissemination purposes.

2. Requirement on the Use of an Automated Information System

In order to facilitate learning community activities, all Early Head Start programs will be required to use an automated information system to collect program information on families, services, collaborative arrangements, staff, training, services utilization and costs. The Head Start Family Information System (HSFIS), which is Head Start's new automated record keeping system, is currently being modified to accommodate the needs of Early Head Start. The HSFIS software and User's Manual will be made available to Early Head Start grantees at the time of award and grantees will be responsible for coordinating the collection of data for and management of HSFIS.

As Early Head Start sites will be in the first wave of HSFIS implementation in the field, technical assistance for implementation issues, including linkages to existing systems, will be provided through the ACYF-supervised contractor responsible for implementing HSFIS and through mentor sites from the pilot phase of the HSFIS project.

3. Continuous Improvement and Formative Evaluation Requirements

In order to enter fully into the learning community environment on both the national and local level, all

Early Head Start programs will be required to:

- Conduct a local assessment of progress toward stated objectives and program improvement using the automated information system and other sources of data which will measure progress toward stated objectives and contribute to a process of continuous improvement within the program and sponsoring agency;
- Provide information from the Early Head Start automated information system as requested by a National Contractor;
- Collect qualitative information on the program and on individual families;
- Participate in the program variation and quality studies, if requested to do so by the ACYF; and
- Document the program model and develop dissemination materials.

All Early Head Start programs are required to have the capacity to carry out the activities listed above. Thus, applicants for Early Head Start funds will need access to expertise in developing and using performance measures, as well as in conducting qualitative evaluation. Applicants are strongly encouraged to form partnerships with representatives of local universities or other research organizations who can assist them in the conduct of formative evaluation and continuous improvement activities, and who can become potential candidates for the research and impact studies discussed below.

4. Impact Study and Research Site Requirements

Any Early Head Start program could be required to participate in the national impact study and therefore should be prepared to participate in random assignment over a specified time period. A limited number of funded Early Head Start programs will be selected by the ACF as special research sites in FY 1996. Selected sites shall fulfill all of the continuous improvement and other evaluation requirements listed above, and, in addition:

- Serve as a research site where a university or research organization will conduct research on the child, family, program and community variables that affect outcomes; and, as such, become eligible to participate in the Early Head Start/Head Start longitudinal study.
- Collaborate with the university or research organization in the development of relevant research questions and in the design of the local study; and/or,
- Serve as a national impact study site and accept assignment under either an experimental or quasi-experimental condition and/or cooperate with a national contractor and the ACF in establishing comparison groups appropriate for answering questions of impact, recruitment and/or generalizability.

The ACF will award approximately $2 million for local research activities in FY 1996. Early Head Start programs which are chosen by the ACF as impact evaluation and special research sites will be required to cooperate in carrying out intensive research and evaluation activities (e.g. random assignment of recruited families to comparison and program groups). The Request for Proposal for research site competition involving original or newly identified research partners, will be released in the Fall of 1995. Selection of research sites will be based on a combination of factors that may include proposed study design, research partner qualifications, location, program composition, and projected program readiness for evaluation.

Part III. Application Requirements

Applicants must address the following requirements in their applications for financial assistance. For the convenience of the applicants, these requirements have been organized according to the evaluation criteria presented in Part IV.

A. Objectives and Need for Assistance

1. State the objectives for the program and indicate how these objectives relate to the four Early Head Start Program Goals (see the Summary Section of this Announcement or Appendix C), and demonstrate that there is a need for the program that relates to these objectives and is based on an assessment of the community (conducted by the applicant or resulting from a recent study of the community) and consultation with consumers. Provide letters of support for your program from community leaders and residents.

2. Identify the population to be served by the project and explain why this population is most in need of the program. Identify the target enrollment size (number of families and estimated number of infants and toddlers) and provide assurances that the population the program intends to recruit and enroll will meet Early Head Start eligibility criteria.

3. Identify the geographic location to be served by the program. Describe the key characteristics of the targeted area and explain what makes the area an identifiable community or neighborhood. Describe what services and resources are/are not currently available in the area which serve pregnant women and families with infants and toddlers. Provide demographic and other information on the target area which demonstrates that there are a sufficient number of eligible, unserved families in the area to justify the target enrollment size. In addition, demonstrate that the program will be able to recruit at least twice as many eligible families to be enrolled from the target area should the program be selected as a national impact study site and be required to establish a randomly assigned comparison group (See Part II, Section H, Number 4). Attach relevant maps or other geographic aids.

B. Results or Benefits

1. Identify the specific results or benefits that could be expected for families and children participating in the program. Identify the specific community-wide results or benefits. Identify the specific results or benefits that could be expected for the staff working in the Early Head Start program as well as other child development caregivers and family development staff working in a variety of relevant community agencies.

2. Identify the kinds of qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits.

3. Provide assurances that the program will collect data on groups of individuals and geographic areas served, types of services to be furnished, service utilization information, types and nature of needs identified and met, and such other information as may be required periodically by the ACF for purposes of the national evaluation.

4. Describe how the lessons learned from the program will benefit national policy, practice, theory and research.

C. Approach

1. Describe the method used to undertake the community assessment and consumer consultation process that caused the applicant to conclude that there is a need for the proposed program as discussed in Part III, Section A. An applicant need not conduct an independent assessment of the community if such an assessment already exists. In this case, the applicant should describe the method of the recently conducted assessment and explain any additional consultation with consumers as it relates to the development of the proposed program. In addition, all applicants must describe the planning the program will do during the start-up period to prepare for implementation of the program and explain how consumers and other

stakeholders in the community will be involved in the planning.

2. Explain the approach to recruiting and enrolling the number and type of children and families from the target recruitment area, as discussed in Part III, Section A. Discuss any special efforts you will make to recruit and enroll pregnant women and families with children under age one. Provide assurances that you will carry-out random assignment should your program be selected to participate in the national impact study.

3. Describe how the program will ensure that at least 10 percent of enrollment and participation opportunities will be made available to children with disabilities (as defined by the IDEA Part H Lead Agency for the State). Describe the policies and practices the program will have in place to assure that a child will not be denied enrollment or participation in the program on the basis of a disability or the severity of such a condition. Describe how the program will work with the Part H local lead agency or, if available, the local Interagency Coordinating Council to arrange or provide for special services needed by these children and their families. Describe how staff will coordinate their efforts with others to ensure children with disabilities and their families receive high quality services.

4. Describe the approach to providing child development services and explain the rationale for choosing the approach. Identify and describe the specific approaches that will be used for assuring the intellectual, social, emotional and physical development of the infants and toddlers served. Describe the philosophy, curricula, staffing patterns, staff qualifications, types and quality of settings and any other relevant information that will comprise the program's model for supporting the growth and development of very young children. Clearly explain how your model will meet the developmental needs of very young children (including children from non-English speaking families).

5. Explain how the program's child development approach will promote parent/guardian-child interaction and support the mother-child and/or father-child bond. Also explain how caregiving will be provided in ways that support infant and toddler attachment to a limited number of skilled and caring individuals.

6. Describe how high-quality infant and toddler full- and part-day child care will be provided to children of parents who are working or in training or to children who require out-of-home care due to special parental circumstances like substance abuse treatment. Discuss the relationship between these resources and the program's overall child development approach. Describe the process the program will use to determine that child care (provided either directly or through referral) will be of high quality. In addition, describe the program's approach to building capacity in communities where high quality infant/toddler child care is lacking.

7. Describe the program's approach to ensuring the continuation of developmentally-appropriate services for children, including those with disabilities, and their families once the children reach the age of three and the family exits the Early Head Start Program.

8. Describe the specific approaches for providing, either directly or through referral, ongoing well-baby and well-child health services such as early and periodic screening, diagnosis, treatment, immunizations, nutritional assessment, developmental surveillance and anticipatory guidance. In addition, describe the approach for ensuring that children are cared for in safe and hygienic environments.

9. Describe the approach for supporting family growth and development and explain the rationale for choosing the approach. Explain the framework of and procedures for developing each family's individualized plan. Explain how you intend to work with other service delivery systems which require a similar plan, such as the Part H Individualized Family Service Plan (IFSP), to ensure that the family only need to complete one plan and that one plan can be used by all relevant programs to ensure a seamless service delivery system for the child and family. Describe how your family development approach will assist families and individual family members in identifying, pursuing and achieving goals and overcoming obstacles on the way to achieving those goals.

10. Describe how the program will develop relationships with parents which promote their involvement with the program. Describe the strategy and the opportunities for parent involvement providing assurances that it meets or exceeds the parent involvement standards described in 45 CFR Part 1304 Instruction I–30, Section B–2, 70.2, the Parents. Explain what special efforts the program will make to reach out to and involve fathers.

11. Describe what services the program will provide, either directly or through referral, to promote adult and family health and wellness. Identify and explain the mental and physical health services which will be made available to and accessible by the parents, siblings and other significant family members of the infants and toddlers served by the program. Describe what the program will do to promote women's health and wellness prior to, during and after pregnancy. In addition, describe what the program will do to provide access to smoking cessation and substance abuse prevention and treatment services for affected families.

12. Describe what services the program will provide, either directly or through referral, to promote progress toward economic self-sufficiency for parents. Describe the program's approach for basic literacy training, adult basic education, employability skills training and job development and placement services.

13. Describe what assistance the program will provide, either directly or through referral, to families in obtaining needed income support, food, and decent, safe housing.

14. Identify the existing transportation resources available to families in reaching services provided at the program site and in off-site locations. Describe any transportation arrangements the program will make to ensure that families and children are able to access needed services.

15. Describe the program's approach to community building and explain the rationale for choosing the approach. Describe how the program will be coordinated with other programs and services in the community which serve pregnant women, infants, toddlers and their families and how the program will assist in the development of local community capability, expertise and commitment to carry out comprehensive service programs built around the needs of pregnant women and families with very young children. Describe any barriers to collaboration in your community and explain your strategy for addressing these. Identify by name specific providers, agencies and organizations with which the applicant will coordinate in order to carry out the requirements of this project. Applicants should furnish formal interagency agreements or contracts (if available) indicating which services will be provided to which program participants for what periods of time, by each of those provider agencies and/or organizations.

16. Describe linkages that the program will make with the following communities during the planning, implementation and operation of the program: Health and nutrition (e.g., public health departments and other

health providers and programs including Title V, Supplemental Food Program for Women, Infants and Children (WIC) and Medicaid prenatal care services and the Medicaid Early and Periodic Screening, Diagnosis and Treatment program (EPSDT)); early intervention (e.g., Part H local lead agency or, if available, local interagency coordinating councils and University Affiliated Programs); mental health and substance abuse prevention and treatment; education (e.g., local preschool, child care, Head Start, and elementary schools); child care resource and referral agencies and their networks; business (e.g., the local Private Industry Council); parent groups; and other strength-building organizations.

17. Describe the approach to staff selection and explain the rationale for choosing the approach. Describe what staffing patterns and mix of staff qualifications and language/cultural competencies the program will require to ensure that staff, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide quality, comprehensive, inclusive and family-centered services to young children and families. Describe the process the applicant will use to identify and select individual staff—from directors to caregivers to data management staff—who demonstrate the personal characteristics, competencies and skills necessary to provide quality services and promote quality relationships with and among children, families, the community and other staff. Explain how the program will ensure that all infant/toddler caregivers are qualified, with sufficient grounding in infant/toddler development and care, and parent/caregiver relations prior to working with children and families enrolled in the program.

18. Describe the approach to staff development and the rationale for choosing the approach. Describe the training, technical assistance, and supervision that will be provided to ensure continued enhancement of staff skills and teamwork. Describe how training and technical assistance opportunities will be coordinated with other service providers in the community so that Early Head Start both provides and benefits from the knowledge, expertise, and training opportunities of other relevant community programs and service delivery systems. Describe how the program will ensure that staff are knowledgeable about the rights of children with disabilities and are capable of providing such infants and toddlers with high quality care in a supportive and developmentally appropriate environment.

19. Identify and explain the management and continuous improvement plan(s) for implementing the program. Include: An outline of the time frames and milestones for all key activities that the program will engage in during the first year of operation, as well as a preliminary outline of time frames and milestones for key activities in the remaining years of the project; a description of the procedures for assessment of progress toward stated objectives including how collection of data on the results and benefits identified in Part III, Section B will contribute to a process of continuous improvement within the program and the sponsoring agency; a description of how an automated information system will become an integral component in the management and continuous improvement of the program; a description of how confidentiality of user data will be maintained; a description of the applicant's capacity (e.g. facilities, administrative and support personnel, etc.) to support the program at the proposed target enrollment size; a description of the strategy for reducing staff turnover; and a description of how the program will go about establishing a Policy Council (as described by Head Start Regulation, 45 CFR part 1304) and a Health Services Advisory Committee (as described by Head Start Regulation, 45 CFR part 1304).

D. Staff Background and Organizational Experience

1. Describe the applicant's experience in providing comprehensive child development and family development services to families with infants and toddlers, as well as the applicant's experience in collaborating with local, State and Federal partners. Describe the applicant's history and relationship with the target community. Include a complete discussion of relevant program, administrative and fiscal management experience.

2. If the applicant represents a consortium of partner agencies, explain the relevant background of each partner and the partners' experience in planning and implementing programs to serve children and families. Each partner must provide a letter of commitment which authorizes the applicant to apply on behalf of the consortium.

3. Identify and provide a brief description of key staff who are proposed to work in the program and indicate their educational training and experience working with similar programs. Provide resumes. Build on the answer to Part III, Section C, Number 17 by explaining how these particular staff persons comprise a multi-disciplinary team of experts. In addition, explain how the ethnic and racial composition and language proficiencies of these particular staff persons is reflective of the community where the program is located.

4. Describe the expertise the organization will utilize in conducting the formative evaluation and continuous improvement activities described in Part II, Section H, Number 3. Describe the experience of and provide resumes from the individuals who will assist the program with continuous improvement and formative evaluation activities.

5. Provide assurances that the applicant will cooperate with a multi-site evaluation contractor and any other contractor the ACF may fund to provide management support or technical assistance services to Early Head Start programs.

E. Budget Appropriateness

1. Provide two detailed, line-item budgets: one that accounts for all relevant start-up and operating costs to be incurred in the first year of the project and one that reflects ongoing operating costs. In the proposed budgets, applicants must set aside sufficient funds so that 5 staff can travel to Washington, D.C. for two annual meetings to be convened by ACYF (i.e., 5 staff $\times$ 2 trips = 10 trips). Each budget should include the required non-Federal share of the cost of the project (See Part II, Section F).

2. Describe how these budgets reflect high quality, ongoing services provided at a reasonable cost. Include discussions on the appropriateness of staff compensation levels and funds set aside to promote staff development (programs are encouraged to set aside up to 10% of the annual budget for staff development purposes), costs associated with special equipment needs and the removal of architectural barriers for disabled families and children, renovation costs associated with providing environments conducive to the high quality provision of child and family development services, costs associated with family transportation and emergency resource needs, etc. Explain what efforts the applicant has made or will make to secure other community cash and in-kind resources, besides those shown in the budgets, and what additional resources will be used to support the provision of Early Head Start services to children and families.

Part IV. Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under Part III of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following five criteria. The point values following each criterion indicate the numerical weight each criterion will be accorded in the review process.

A. Criterion 1. Objectives and Need for Assistance (15 Points)

The extent to which, based on community assessment information, the applicant identifies any relevant physical, economic (e.g., poverty in the community), social, financial, institutional, or other issues which demonstrate a need for the Early Head Start program; in addition, the extent to which the applicant identifies the strengths of the community the project will serve. The extent to which the applicant lists relevant program objectives that adequately address the strengths and needs of the community. The extent to which the applicant describes the population to be served by the project and explains why this population is most in need of the program. The extent to which the applicant gives a precise location and rationale for the project site(s) and area(s) to be served by the proposed project.

Information provided in response to Part III, Section A of this announcement will be used to evaluate applicants on this criterion.

B. Criterion 2. Results or Benefits Expected (10 Points)

The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives. The extent to which the applicant describes the kinds of data to be collected and how it will be utilized to measure progress towards the stated results or benefits. The extent to which the applicant describes how the lessons learned from the program will benefit national policy, practice, theory and research.

Information provided in response to Part III, Section B of this announcement will be used to evaluate applicants on this criterion.

C. Criterion 3. Approach (50 Points)

The extent to which the applicant outlines a workable plan of action which relates to the four Early Head Start program cornerstones (see Part I, Section F or Appendix C), reflects the nine program principles (see Part I, Section E or Appendix C), and details how the proposed work will be accomplished. The extent to which the applicant explains why the approach chosen makes sense in light of the needs, objectives, results and benefits described above. The extent to which the approach is grounded in recognized standards and/or guidelines for high quality service provision or is defensible from a research or ''best practices'' standpoint.

The extent to which the applicant's management plan demonstrates sufficient management capacity to implement a high-quality Early Head Start program.

Information provided in Part III, Section C of this announcement will be used to evaluate applicants on this criterion.

D. Criterion 4. Staff Background and Organizational Experience (15 Points)

The extent to which the proposed program director, proposed key project staff, and the organization's experience and history with the community demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope. The extent to which the organization's (and/or university/research organization partner's) experience demonstrates an ability to carry out the continuous improvement and qualitative evaluation activities described in Part II, Section H, Number 3.

Information provided in response to Part III, Section D of this announcement will be used to evaluate applicants on this criterion.

E. Criterion 5. Budget Appropriateness (10 Points)

The extent to which the program's costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes. The extent to which the salaries and fringe benefits reflect the level of compensation appropriate for the responsibilities of staff. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost. The extent to which the program has attempted to and/or succeeded in garnering cash or in-kind resources from other sources in the community.

Information provided in response to Part III, Section E of this announcement will be used to evaluate applicants on this criterion.

Part V. The Application Process

A. Availability of Forms

Eligible applicants interested in applying for funds must submit all of the required forms included at the end of this program announcement in Appendix A.

In order to be considered for a grant under this Announcement, an application must be submitted on the Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0043. A copy has been provided (see Appendix A). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their application.

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103–227, The Pro-Children's Act of 1994. A copy of the **Federal Register** notice which implements the smoking prohibition is included in the application kit.

B. Application Submission

Applicants submitting proposals should use the following format guidelines: Proposals should be organized according to the evaluation criteria located in Part IV of this **Federal Register** announcement. For each of the five specified criteria, applicants should provide information in response to the application requirements described in Part III of this announcement. These application requirements are cross-referenced by number in the last paragraph of each criterion. All persons

who prepared sections of the proposal should be identified along with those sections, as well as identified according to their responsibilities with regard to the proposed program.

One signed original and two copies of the grant application, including all attachments, are required. The program announcement number (ACYF–HS–93600.952) must be clearly identified on the application. Each application must be limited to no more than 125 double-spaced pages of program narrative (not including the forms which make up the SF–424 and resumes) including the one-page project summary. If the narrative portion of the application is more than 125 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers. The attachments/appendices to each application must be limited to no more than 100 pages. If the attachments/appendices to each application are more than 100 pages, the other pages will be removed from the application and not considered by the reviewers.

The application must be paginated beginning with the Form 424 and also contain a table of contents listing each section of the application with the respective pages identified. Only one application per applicant will be accepted.

C. Application Consideration

Applicants will be scored against the evaluation criteria described above. The review will be conducted in Washington, DC by a panel consisting of experts in the areas of child and family development and other related fields.

To further inform the Associate Commissioner of the Head Start Bureau and the Commissioner of ACYF, representatives from the Federal government may conduct site visits to programs whose applications fall within a certain range of competitive rankings (i.e., all programs which have made the ''first cut'', but which the Commissioner of ACYF will not approve without additional data). This site visit will take place following the competitive review and before the award decision for the purpose of obtaining additional information, clarifying programmatic strategies and other issues which surfaced in the applications, and identifying any problem areas needing to be resolved.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, in recommending the project to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. An application may be funded in whole or in part, depending on the relative need for services, applicant ranking, geographic location and funds available.

The Commissioner may elect not to provide funding to applicants experiencing problems in providing quality services identified either through the panel review or the site visit.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

Subject to availability of additional resources in FY 1996 and the number of acceptable applications received as a result of this program announcement, the Commissioner may elect to select recipients for the FY 1996 cohort of programs out of the pool of applications submitted for FY 1995 funds.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.

—The narrative portion of the application does not exceed 125 double-spaced pages in a 12-pitch font with 1½ inch margins at the top and 1 inch at the bottom and both sides.

—Attachments/Appendices to the application do not exceed 100 pages. Attachments/appendices should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent/agreement. Please do not include books or video tapes as they are not easily reproduced and are therefore inaccessible to the reviewers. Each page should be numbered sequentially.

—A complete application consists of the following items in this order:

(1) Application for Federal Assistance (SF 424, REV.4–88);

(2) Table of Contents;

(3) Budget information—Non-Construction Programs (SF 424A&B REV.88);

(4) Budget justification for Section B—Budget Categories, including subcontract agency budgets;

(5) Project Summary (not to exceed one page);

(6) Application Narrative and Appendices;

(7) Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

(8) Assurances Non-Construction Programs;

(9) Certification Regarding Lobbying;

(10) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88).

E. Due Date for the Receipt of Applications

Deadlines: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline date at the address or receipt point specified in this program announcement. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline date. (Applicants are cautioned that postmarks *will not* be considered as a methodology for meeting the deadline.)

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions areas need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to the ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, OFM/DDG 6th Floor East, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of Single Points of Contact for each State and territory is included as Appendix B of this announcement.

H. Closing Date

The closing date for submission of applications is May 31, 1995.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: March 10, 1995.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

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APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code):*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ■ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.):*

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter or Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Line 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, your will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

_____

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184–01–C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property:

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, a failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions.'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

_____

Title

_____

Organization

_____

Date

_____

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*:	
Congressional District, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
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By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Appendix B

Executive Order 12372—State Single Points of Contact

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Appendix C—The Statement of the Advisory Committee on Services for Families With Infants and Toddlers

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Overview

All children from birth to age three need early child development experiences that honor their unique characteristics and provide love, warmth, and positive learning experiences; and all families need encouragement and support from their community so they can achieve their own goals and provide a safe and nurturing environment for their very young children. This recognition is guiding the design of the new Early Head Start program.

Early Head Start marks a turning point in America's commitment to our youngest children and their families. By focusing on child development, family development, community building, and staff development a new era of support to very young children and their families is born, building on the experiences and lessons learned from existing Head Start programs.

Early Head Start puts resources into a constellation of high quality supports and services that will promote healthy child and family development, and backs them with a Federal commitment to training, standards and monitoring for high quality, research and evaluation, and services coordination at the national level. It enables families and communities to design flexible and responsive programs but requires that, at a minimum, programs provide child development, family support, health services for young children and pregnant women, and home visits to families with newborns. This would include child care services that respond to the needs of families. When services are provided through referral, it requires that the Early Head Start program assures the services to which families are referred are of highest quality, available and accessible, and that needed followup occurs. And although service delivery mechanisms may vary, a common characteristic will be that each Early Head Start program will establish a place which is recognized as a source of support for very young children, families, and caregiving staff. Programs will be encouraged to give this Early Head Start place visibility and identity.

With this design, the Early Head Start program will be suited to last well into the next century, always reshaping itself to provide high quality, responsive, and respectful services to America's youngest children and their families.

Background, Vision, and Goals

The reauthorization of the Head Start Act in 1994 made it possible to formally open a new chapter of Federal support for families with infants and toddlers by establishing a special initiative within the context of the Head Start program. Beginning in Fiscal Year 1995, the Secretary of Health and Human Services will award grants to Early Head Start programs which will provide early, continuous, intensive, and comprehensive child development and family support services to low-income families with children under age three. This initiative will bring together under one umbrella Head Start's existing programs for families with infants and toddlers, the Comprehensive Child Development Program and the Parent and Child Centers; strengthen the Migrant Head Start Program; and add new resources to model high quality child development and family development services for very young children and their families.

To help with the design of the new initiative, the Secretary formed the Advisory Committee on Services for Families with Infants and Toddlers. The Committee was charged with advising the Secretary and Assistant Secretary for Children and Families on the development of program approaches for the initiative that would address the parenting and child development needs of low-income parents and their infants and toddlers. We were to pay particular attention to the key principles and array of models of effective culturally and developmentally appropriate service delivery. To fulfill this commitment, we met three times during the summer of 1994 to engage in discussions about our vision for a national approach to high quality, responsive services for very young children and their families. We outlined the Federal role for carrying forth this vision, ensuring such programs can flourish.

We are excited about the fruits of these deliberative efforts and confident that the resulting initiative will advance Head Start leadership in realizing a national vision of communities where:

fl *children,* from birth, receive support through their family and their community to achieve optimal growth and development and build a foundation of security, self-confidence,

and character strength which will in turn enable them to build successful social relationships for learning and continued development through later childhood and adulthood;

fl *families* receive support to meet their personal goals, and resources and guidance to prepare for their child's birth and provide a warm, caring, responsive environment for their very young child;

fl *communities* embrace and support all families, celebrating the birth of their children and creating an environment where support and resources are mobilized to ensure a comprehensive, integrated array of services are available and accessible for all very young children and their families; and

fl *staff* receive the professional education and personal support they need to provide high quality environments and experiences and engage in responsive relationships that promote the healthy development of infants, toddlers, and their families.

In keeping with this vision, the goals set forth by the Advisory Committee for Early Head Start will be:

fl To provide safe and developmentally enriching caregiving and environments which promote the physical, cognitive, social and emotional growth of *infants and toddlers* and prepare them for future growth and development;

fl To support *parents*, both mothers and fathers, in their role as primary caregivers and educators of their children, and *families* in meeting personal goals and achieving self-sufficiency across a wide variety of domains;

fl To mobilize *communities* to provide the resources and environment necessary to ensure a comprehensive, integrated array of services and support for families, and to foster the systems change necessary to summon forth the guiding vision of this initiative; and

fl To ensure the provision of high quality responsive services to families with infants and toddlers through the development of highly-trained, caring and adequately compensated program *staff*.

The Advisory Committee recognizes that the vision and goals outlined above have also been shaped by the lessons learned from the Comprehensive Child Development Program, Parent and Child Centers, Migrant Head Start Programs, locally designed Head Start programs, and other early child development and family support efforts serving families with very young children. As part of the overall consultation for the development of this initiative, Federal staff conducted over 30 focus groups with parents, practitioners, researchers, advocates, and representatives of professional organizations. Focus groups were designed to address topical areas such as child care, family services, health care, support and services for children with disabilities and their families, community mobilization, parent involvement and parent advocacy. In addition, Federal staff met with or received materials and recommendations from a number of other experts and practitioners in the field. The suggestions, guidance, and information received through this process have been invaluable to both the Advisory Committee and the Administration on Children, Youth and Families.

Research Rationale

Findings from more than three decades of research in child and family development support the vision and goals set forth for support to families with infants and toddlers. We know that the time from conception to age three is a critical period of human development, as change occurs more rapidly than in any other period of the life span. Growth in these early years establishes the basic foundation for future development. For infants and toddlers to develop optimally, they must have healthy beginnings and the continuity of responsive and caring relationships. Together, these supports help promote optimal cognitive, social, emotional, physical, and language development. When these supports are missing, the immediate and future development of the child may be compromised. Fortunately, recent research identifies characteristics of effective programs that enhance both child and family development. This growing body of knowledge provides a solid base upon which the Early Head Start program can be founded.

Maternal and Infant Health

Maternal and infant health are essential for ensuring normal pre- and post-natal development of very young children. Late or inadequate prenatal care, malnutrition, stress and exposure to harmful substances are associated with shortened gestation, reduced birthweight, birth defects and underdeveloped brain growth (Osofsky, 1975; U.S. Department of Health and Human Services, 1989; Carnegie Corporation, 1994). These, in turn, have been associated with higher probabilities for infant mortality, illness, disabilities, child abuse, difficulty in relationships (Glasgow and Overall, 1979) and subsequent learning disorders (Drillien, Thomson and Bargoyne, 1980). During the early years of life, proper nutrition, routine well-child health care, timely immunizations, safe environments and health-promoting behaviors are necessary to support physical growth and development.

Given the paramount importance of health for very young children, a major focus of the Early Head Start program must be to ensure women receive the health services needed to promote a healthy pregnancy and birth, and very young children receive early and ongoing well-baby care, immunizations, and other essential health services to support their development.

Child-Caregiver Relationships

The child-caregiver relationships with the mother, father, grandparent and other caregivers are critical for providing infants and toddlers support, engagement, continuity and emotional nourishment necessary for healthy development, and the development of healthy attachments (Ainsworth, Blehar, Waters and Wall, 1978). Within the context of caregiving relationships, the infant builds a sense of what is expected, what feels right in the world, as well as skills and incentives for social turn-taking, reciprocity and cooperation (Emde, Biringen, Clyman and Oppenheim, 1991; Isabella and Belsky, 1991). The infant's activities are nourished and channeled in appropriate ways so as to encourage a sense of initiative and self-directedness. During the toddler period, the child, through repeated interactions with emotionally-available caregivers, also begins to learn basic skills of self-control, emotional regulation and negotiation (Kochanska, 1991; Kopp, 1989; Suess, Grossman and Sroufe, 1992). Empathy for others and prosocial tendencies for caring and helping also develop during toddlerhood as well as the emotions of pride and shame; experiencing and learning about these capacities require responsive caregiving relationships in the midst of life's inevitable stresses and challenges (Zahn-Waxler and Radke-Yarrow, 1990).

A sense of pleasure, interest in exploration, early imaginative capacities, and the sharing of positive emotions also begin in infancy—all of which require repeated and consistent caregiver relationship experiences and form a basis for social competence that carries through toddlerhood and the preschool period (Emde, 1989; Dix, 1991). The opportunities for play for both infant and caregiver, as well as the skills that develop from play, are often under-appreciated aspects of healthy development (Bruner, 1986; Elicker, Englund and Sroufe, 1992).

Finally, the importance of promoting a network of healthy caregiving relationships for the very young child cannot be overstated (Crockenberg, 1981; Egeland, Jacobvitz and Sroufe, 1988; Sameroff and Emde, 1989; Tronick, Winn and Morelli, 1985). The network of caring relationships provides an ever-expanding circle of support for both child and family. Factors that undermine optimal child-caregiver relationships include isolation, lack of support and maternal depression (Crnic, Greenberg, Robinson and Ragozin, 1984), the latter reported to be as high as 56% in some samples of low-income new mothers (Hall, Gurley, Sachs and Kryscio, 1991). In child care settings, high staff turnover, low staff wages, low quality programming and lack of adequate staff training for substitute caregivers negatively affects the quality of child-caregiver relationships (Zigler and Lang, 1991; Whitebook, Howes and Phillips, 1989). This in turn further compromises the nature and quality of the child's overall development.

Thus, it follows that a major focus for Early Head Start services should be the development of healthy and skillful relationship building between very young children and their parents and caregivers that encourages interactions and promotes attention and activity in infants. Hence, opportunities for sustained relationship-building over extended periods of times will be an explicit goal throughout the program.

Characteristics of Successful Programs Serving Families with Infants and Toddlers

The goal of many early child development programs is to enable the child, with the support of the parents as primary caregivers and other caregivers, to establish a developmental path that will prepare him or her for long-term success. Hundreds of programs with a variety of specific emphases have sought to achieve this goal. From these many interventions, a picture of the critical ingredients for successful programs has emerged. In short, we know effective programs often are characterized by: early prenatal services to the expectant woman (Olds, Henderson, Tatelbaum and Chamberlin, 1986); a two-generational focus (Zuckerman and Brazelton, 1994; Administration on Children, Youth and Families, 1994; Ramey and Campbell, 1984; Brooks-Gunn, Klebanov, Liaw, Spiker, 1993); family-centered services that address self-sufficiency through the provision of social services and parent education (Booth, Barnard, Mitchell and Spieker, 1987; Olds, Henderson, Tatebaum and Chamberlin, 1986; Olds, Henderson, Tatebaum and Chamberlin, 1988); quality child development services that are coupled with family services (Lally, Mangione and Honig, 1987; Brooks-Gunn, Klebanov, Liaw and Spiker, 1993); continuity of service delivery for the child and family that ensures the availability of support over a number of years with smooth transitions to other service delivery systems (Campbell and Ramey, 1994); continuity of caregivers (Howes and Hamilton, 1992); intensity of service delivery in terms of availability, accessibility, and usage of services (Booth, Barnard, Mitchell and Spieker, 1987; Ramey, Bryant, Wasik, Sparling, Fendt and LaVange, 1992); and consolidation or integration of service delivery systems. Further, research tells us that communities have been found to become more responsive to the needs of low-income families as a result of program activities (Kirschner, 1970).

Clearly, research over the past three decades has shown that when programs focus on both child development and family development through early, high quality, comprehensive, continuous, intensive services, opportunities for optimal child and family development can be realized, even for the most vulnerable families and very young children. The challenge for the Administration on Children, Youth and Families and the programs which will receive funds through this initiative is to translate these research findings into the design and operation of high quality programs so all families with young children served by Early Head Start will be able to grow and prosper. The following principles and cornerstones establish the framework for this to occur.

Program Principles

In recognition that each child is an individual who is supported by a family and that families are supported by neighborhoods and communities, the Advisory Committee recommends that programs funded under the new initiative be encouraged to develop a range of strategies for supporting the growth of the very young child within the family and the growth of the family within the community. Thus, each Early Head Start program should be family-centered and community-based. We recommend that the following principles serve as the conceptual foundation for Early Head Start:

fl *High Quality:* Commitment to excellence will enable the new programs to be models for services to families with infants and toddlers from all socioeconomic strata of society. High quality will be assured in the direct services provided, and in the services provided through referral. To this end, each program will acknowledge and utilize the bodies of knowledge, skills and professional ethics surrounding the fields of child development, family development and community building. In particular, programs will recognize that the conception-to-three age period is unique in both the rate of development and in the way young children's physical and mental growth reflects and absorbs experiences with caregivers and the surroundings. Thus, high quality caregiving practices will spring from the healthy awareness that the unique nature of infant and toddler development not only carries with it major opportunities for intervention, but also leaves children especially vulnerable to negative inputs. The Federal government will share in the commitment to high quality by providing thorough and ongoing monitoring to assure program adherence to performance standards; technical assistance that addresses each program's individual needs and amplifies innovation and development across all programs; evaluation which measures program success against meaningful outcomes for young children and families; and research which contributes to the state of the art on child development, family development and community building.

fl *Prevention and promotion:* Recognizing that windows of opportunity open and close quickly for families and young children, programs will seek and pursue opportunities to play a positive role in promoting the physical, social, emotional, cognitive and language development of young children and families before conception, prenatally, upon birth, and during the early years. By supporting the promotion of their health and well-being, program staff will be able to prevent and detect problems at their earliest stages, rallying the services needed to help the child and family anticipate and overcome problems before they interfere with healthy development. While early and proactive promotion of healthy development and healthy behaviors will be emphasized, programs will also need to be able to understand and respond to family crises that may occur while the family is enrolled in the program.

fl *Positive Relationships and Continuity:* The success of each program will rest on its ability to support and enhance strong, caring, continuous relationships which nurture the child, parents, family, and caregiving staff. Programs will support the mother-child, father-child bond by recognizing each

parent as his or her child's first and primary source of love, nurturance and guidance. Caregiving will be provided to families who need it in ways that support infant and toddler attachment to a limited number of skilled and caring individuals, thus maintaining relationships with caregivers over time and avoiding the trauma of loss experienced with frequent turnover of key people in the child's life. These relationships will aim to respectfully enhance child interest, curiosity, play and imagination, which, in turn, will develop a shared sense of trust, confidence and esteem for both caregiver and child. In addition, programs will model strong, mutually respectful relationships between staff and families, among staff, and with other community organizations and service providers. To do so, programs will be receptive to individual strengths, perspectives and contributions; affirm the value of the child and family's home culture; and support an environment where very young children, parents and staff can teach and learn from each other.

fl *Parent Involvement:* As in all Head Start efforts, a hallmark of the new initiative will be the creation and sustenance of an environment that supports the highest level of partnership with parents, both mothers and fathers. As such, programs will support parents as primary nurturers, educators, and advocates for their children; assure that each parent has an opportunity for an experience that supports his or her own growth and goals, including that of parenting; and provide a policy- and decision-making role for parents. Furthermore, opportunities for parent involvement will encourage independence and self-sufficiency for parents. Special efforts will be made to welcome and support fathers as parenting partners.

fl *Inclusion:* Program will seek to build communities that respect each child and adult as an individual while at the same time reinforcing a sense of belonging to the group. Programs will support participation in community life by young children with disabilities and their families; families of very young children with significant disabilities will be fully included in all program services.

fl *Culture:* Children and their families will come to the new programs rooted in a culture which gives them meaning and direction. Programs will demonstrate an understanding of, respect for, and responsiveness to the home culture and home language of every child, thus affirming the values of each family's culture and providing the context for healthy identity development in the early years of life. Program staff will become aware of their own core beliefs and values and be attuned to the role culture and language play in child development, family development and the surrounding community values and attitudes. Programs will pursue opportunities to support home culture and language, while also recognizing the significance of a common culture shared by all. In building a more harmonious and peaceful community for children to grow in and for families to share, programs will encourage and provide opportunities for families and community members to engage in dialogue about culture, language, cultural diversity and multiculturalism.

fl *Comprehensiveness, Flexibility, Responsiveness, and Intensity:* Programs will honor and build upon the unique strengths and abilities of the children, families and communities they serve and continually adapt to meet emerging needs. Developmental opportunities provided to each infant and toddler will address the whole child and be continually adapted to keep pace with his or her developmental growth. And just as programs need to be responsive and attentive to the special needs of very young children with disabilities, they also need to be responsive to parents with disabilities. Family development planning and service provision will be grounded in the belief that families, including those whose problems seem overwhelming, can identify their own goals, strengths and needs, and are capable of growth and change. Once these are identified, program resources of varied intensity will be marshaled to support the whole family in an individualized and responsive manner. Barriers which prevent families from accessing needed supports will be overcome through the location, coordination, and assurance by program staff that services are provided and received. Attention will also be given to ensure programs meet the needs and schedules of working parents. Ultimately, each parent's sense of empowerment and ability to identify and address his or her family's needs will be fostered by responsive and caring relationships with program staff.

fl *Transition:* Programs will be responsible for ensuring the smooth transition of children and their families into Head Start or other preschool programs which are of high quality and provide consistent and responsive caregiving. The Federal government must support both Early Head Start and Head Start programs in carrying out this responsibility. Transition is important for ensuring continued accessibility to enriching early child development experiences and for providing ongoing family support services that promote healthy family development. To facilitate this transition, parents and caregivers should jointly develop a family and child transition plan, identifying services which will continue and new services and programs which will be accessed. Caregivers from both Early Head Start and the new service programs will share responsibility for coordinating and implementing the plan.

fl *Collaboration:* Recognizing that no one program will be able to meet all of a child's and family's needs, programs will initiate or become embedded in an integrated community system of service providers and strength building organizations such as churches and other religious institutions, schools and civic groups. These efforts will foster a caring, comprehensive and integrated community-wide response to families with young children, thus maximizing scarce financial resources and avoiding duplication of agency effort. Likewise, the Federal Government will promote systems change and the efficient use of resources through the active pursuit of local, State and Federal partnerships which enhance the capacity of local programs to collaborate and combine financial resources.

Program Cornerstones

The principles outlined above establish the foundation for Early Head Start, a program that meets child development, family development, and health related goals while striving to provide high quality, comprehensive, and individualized support and services. In order to accomplish this, the Advisory Committee recommends that the Secretary of Health and Human Services adopt these key elements as the four cornerstones for Early Head Start: child development, family development, community building, and staff development.

Child Development

Programs will seek to enhance and advance each child's development by providing individualized support that honors the unique characteristics and pace of infant/toddler physical, social, emotional, cognitive and language development, including early education and health care. Critical to this development is the promotion of positive parent-child interactions and the enhancement of each parent's knowledge about the development of their child within healthy, safe environments. An early step for

providing this support to parents will be the provision of home visits to families with newborns to offer early encouragement and support and build bridges for families to other resources in the community. Also critical to the child's development is access to and delivery of comprehensive health and mental health services for children, including regular child health care; screening for health problems such as hearing, anemia, lead poisoning, metabolic problems; immunizations; nutritional assessment; developmental surveillance and anticipatory guidance. All children deserve a medical home that provides these and other prevention and treatment services. To help facilitate this, Early Head Start programs will collaborate with a variety of organizations and disciplines to ensure health supervision for children and their families.

It is particularly important that Early Head Start ensure coordination and continuity of services for infants and toddlers with or at risk of a disability, who are eligible for services through Early Head Start and Part H of the Individuals with Disabilities Education Act. These two service systems should be coordinated and integrated so that families and their children experience a seamless system of services, as identified in their family development plan or individualized service plan.

As programs provide child development services, they must ensure that infants and toddlers who need child care receive high quality part- and full-day services. Such child care can be provided directly or in collaboration with other community providers as long as the Early Head Start program assumes responsibility for ensuring that all settings meet the Early Head Start performance standards.

In general, the setting where these services are delivered is left to local option and the preferences of families as identified through their individual family development plan. Settings can represent a range of options including home visiting; family support centers; family child care homes; child care centers; centers where families are engaged in education, training, or employment; community health centers; and others.

Family Development

Programs must recognize that the key to optimal child development and family development is the empowerment of parents in goal setting for themselves and their children. Therefore, families and staff will collaboratively design and update individualized family development plans which ensure that service delivery strategies are rooted in the foundation principles and are responsive to the goals and ideals of the families. When families are served by additional programs which also require an individualized family service plan, such as Part H of the Individuals with Disabilities Education Act and family employability plans, then a single coordinated plan should be developed so families experience a seamless system of services. Based on the plan, programs will ensure the provision of a full range of family services which consider the different support and educational opportunities needed by new parents, pregnant women and expectant fathers, and potential parents, as well as by siblings and extended family members who influence the development of the family and very young child.

It is particularly important that parental health is linked to children's health and development. As such, health services for parents need to be included as part of a two-generational model of health care. Health services must be accessible for parents with a special emphasis on women's health that occurs prior to, during, and after pregnancy.

Services which programs must provide directly or through referral, and which local Early Head Start programs must actively ensure are of high quality and appropriately followed up include: child development information; health services, including services for women prior to, during, and after pregnancy; mental health services; services to improve health behavior such as smoking cessation and substance abuse treatment; services to adults to support self-sufficiency, including adult education and basic literacy skills, job training, assistance in obtaining income support, food, and decent, safe housing, and emergency cash or in-kind assistance; and transportation to program services. Programs must provide direct opportunities for parent involvement in the program so that parents can be involved as decisionmakers, volunteers, and/or employees. Additional services not listed above, but identified by families through community needs assessments and mappings, may be provided either directly or through referral at local option.

Community Building

The commitment of programs to high quality care for very young children and their families serves as a catalyst for creating a community environment that shares responsibility for the healthy development of its children. A program approach that exemplifies openness and caring is the start of community building. Programs should function in communities in a way that mirrors the principles that are the foundation of the program itself: parents become a vital resources for each other and the community at large; staff nurture networks of support; and programs develop relationships of trust with other community institutions, businesses, and with community leaders. By becoming a key actor in the life of the community, programs can serve to mobilize community resources and energies on behalf of children and families.

Essential to community building is ensuring a comprehensive network of services and supports for very young children and their families which are culturally responsive. Programs will be expected to establish collaborative relationships with other community providers and strength-building organizations such as churches and other religious institutions, schools and civic groups. The goal of these relationships will be threefold: increased access to high quality services for program families; assurance that the program's approach to serving families with infants and toddlers fits into the existing constellation of services in the community so that there is a coherent, integrated approach to supporting families with very young children; and systems change which will spark community caring and responsive service delivery for all the families with young children who live there. Thus, all programs will be required to conduct an in-depth assessment of existing community resources and needs and engage in an ongoing collaborative planning process with a range of stakeholders, including parents and residents of the community.

Staff Development

Programs are only as good as the individuals who staff them. This is particularly true of programs which serve young children, since the potential to do harm during the vulnerable years of infancy and toddlerhood is so great. Thus, staff development has been included as a key element in order to underscore its centrality to the success of the initiative.

Programs will be required to select staff who, together, cover the spectrum of skills, knowledge and professional competencies necessary to provide high quality, comprehensive, culturally appropriate, and family-centered services to young children and families. Equally critical will be each program's ability to recognize individuals capable

of entering into one-to-one caregiving relationships with infants and toddlers which support the positive formation of their identities. Likewise, programs will need to identify the capacity of potential staff members to develop caring, respectful and empowering relationships with families and other coworkers. Such individuals will demonstrate characteristics such as high self-esteem, personal strength, and the capacity for being emotionally available. The program directors who make these selections will, themselves, need to possess these characteristics in addition to being highly skilled administrators who exemplify leadership qualities such as integrity, warmth, intuition and holistic thinking.

Ongoing staff training, supervision and mentoring of both line staff and supervisors will be an integral part of staff development. Such training, supervision, and mentoring will reflect an interdisciplinary approach and emphasis on relationship building. Staff training programs will ensure that staff are ''cross-trained'' in the areas of child development, family development and community building. Particular emphasis will be placed on building skills in the areas of home visiting; caregiving relationships; effective communication with parents; family literacy; healthy/safe environments and caregiving practices; early identification of unhealthy behaviors or health problems; service coordination; and the provision of services and support to diverse populations, including families and children with disabilities and developmental delays. In addition, training efforts and supervision will be designed to develop each staff person's capacity to function as a member of a well-integrated, diverse and mutually supportive team comprised of families and other staff. To this end, training and supervision will support opportunities for practice, feedback and reflection. Another strategy for training is the development of multi-disciplinary teams of caregivers who can engage in team teaching, sharing concerns and problems, exploring different approaches, and learning practical skills for working with participants of the program and service providers from other relevant delivery systems. As such, training will model and reinforce the foundation principles of this initiative.

And finally, staff selection, training and supervision will be grounded in the knowledge that high quality performance and development occurs when they are linked to rewards such as salary, compensation, and career advancement; provided in environments that spark curiosity, excitement and openness to new ideas; and grounded in best practices revealed by ongoing research, evaluation and monitoring.

Federal Commitment

Both individual programs and the Federal government must work hand in hand to realize the vision, principles, and program concept outlined above the Early Head Start program. The Advisory Committee believes that a Federal commitment to training, monitoring, research and evaluation, and partnership building which respects and supports local program responsibility, initiative, and flexibility is paramount for the programs' success. In addition, Federal commitment is also needed to support and learn from existing Federal programs serving families with infants and toddlers so that they will have the opportunity to achieve excellence and meet the standards that will be set forth for this initiative. With this commitment, we feel the initiative for families with infants and toddlers will be able to serve as a national laboratory both testing and exemplifying quality child development and family development programs.

Training

Clearly the quality of programs is contingent upon the ongoing support and development of program staff who are trained in the various disciplines which support the principles of family-centered services. As described earlier, program staff need to be able to facilitate both the development of very young children and the development of families. But in too many communities, staff who can play this dual role are few or nonexistent.

The Advisory Committee urges the Secretary to engage in public-private partnerships aimed at establishing a cadre of highly trained practitioners and trainers who will be able to support the development of very young children and their families. Such an effort should extend beyond the scope of the new initiative for families with infants and toddlers, so that children cared for in a variety of settings will benefit from this commitment to enhancing the quality and quantity of caregivers. An example of such a partnership would be a commitment on the part of the Federal government to work with institutions of higher learning to ensure multi-disciplinary pre-service education and field work experience is available for students who wish to work in family-focused programs serving very young children and their families. Another example would be partnering with the foundation or philanthropic community to develop scholarship programs for low-income students desiring but unable to enter the field. A further example is coordinating with organizations of professional trainers to ensure they have the skills, resources and supports needed to work with programs providing early, continuous, intensive and comprehensive services and support to very young children and their families.

When designing the specific training and technical assistance plan for Early Head Start, the Federal government must focus on the whole spectrum of support and services that are needed for developing and advancing high quality staff, from pre-service and in-service training to supervision and monitoring. These supports and services must be provided in a continuous, holistic, responsive manner with the goal of building and nurturing the highest quality caregiving in all programs.

In addition to the focus on training, the Federal government also needs to take the lead in modeling a commitment to and respect for the importance of the caregiving profession. Given this, the Advisory Committee urges the Secretary to implement the Early Head Start program so that it models appropriate competencies, institutionalization of career ladders for staff working within the programs, and provision of staff salaries that are comparable to the importance of the job.

Monitoring

All programs need support and guidance to engage in continuous improvement. As directed by the legislation, the Secretary of the Department of Health and Human Services must provide this support and guidance through ongoing monitoring of the operation of these programs, evaluating their effectiveness, and providing training and technical assistance tailored to the particular needs of such programs.

The Advisory Committee reminds the Secretary that performance standards must be developed and issued in order to set forth the expectation of high quality services and environments for programs serving families with infants and toddlers. It is recommended that there be consistency in the principles and framework of the Early Head Start and Head Start performance standards, with the goal being a seamless approach to Federal performance standards for children from birth to age five. While the goal should be a seamless approach, clearly the content of the standards will vary to reflect the differences in development of children during this age span. Once these are issued, monitoring

should become a tool for both measuring progress toward these high quality standards and for engaging in continuous improvement.

Research and Evaluation

Evaluation of Early Head Start is essential for determining the effectiveness of the initiative and for advancing our understanding about which services work best for different families under different circumstances. Evaluation data and information collected at the local level as part of management information systems and ethnographic research are helpful to provide ongoing feedback to programs and support staff in packaging and delivering a comprehensive array of services which are responsive to and reflective of the individual needs of very young children and their families.

The Advisory Committee believes that the Secretary must approach evaluation not just as a mechanism for producing summary statistics and reports about the changes in child and family development as a result of these new efforts, but as a tool for individual programs so that they can continuously refine their practices based on feedback from their own program evaluation. This feedback is essential to identify the particular conditions and activities that enable parents and other caregivers to most successfully support children's development. It is also essential to test and refine as appropriate the quality of planning, training, staff selection, supervision and program management that is crucial to program success. These lessons learned will benefit local Early Head Start programs, add new knowledge to the fields of child and family development, and will help shape future efforts at the Federal level for very young children and their families.

In keeping with the Head Start national laboratory role, we encourage research that examines variations in Early Head Start experiences on child development to learn more about the effectiveness of different interventions for very young children and their families. Accordingly, we encourage the testing of new models which might focus on linkages between this initiative and welfare reform, special coordination with Part H of the Individuals with Disabilities Education Act, or efforts to support teen parents who are either in school or training. Equally important will be research that identifies features of intervention which optimize relationship building, and research that examines variations in caregiving experiences as they influence child development.

We also recommend that research and evaluation for this initiative be part of an overall research agenda for Head Start which places Head Start in the broader context of research on young children, families, and communities; ensures a commitment to ongoing themes; and has the flexibility to respond to new and emerging developments in the broader early childhood and family development fields.

Partnership Building

Just as local programs will be required to coordinate services in the State and community to ensure a comprehensive array of services, the Federal government must also build partnerships across programs, agencies and departments to facilitate effective integration and coordination of resources and services.

The Advisory Committee points out that it is especially important that the Head Start Bureau work with the U.S. Maternal and Child Health Bureau and the Medicaid program to enhance the availability of and access to comprehensive health services for pregnant women, and very young children and their families. The Advisory Committee particularly recommends Federal leadership in the development of services that are scarce in communities, such as mental health services that meet the needs of families with infants and toddlers. It is equally important that linkages be made with the U.S. Department of Education, Office of Special Education and Rehabilitative Services and the Federal Interagency Coordination Council so that there is a clear message from the Federal government about the importance of partnership around early intervention at the Federal, State and community levels, especially between this initiative and Part H of the Individuals with Disabilities Education Act. The formation of a single Federal Interagency Coordination Council to address services for families with infants and toddlers who are served by Head Start and/or by Part H is recommended. Further, the Head Start Bureau is advised to develop partnerships with the National Institute of Child Health and Development and the National Institute of Mental Health so that programmatic and research activities can be coordinated and the results benefit and influence the work of all institutions.

Beyond coordination and partnership building among the many programs, agencies, and departments of the Federal government, the Advisory Committee advises the Head Start Bureau to continue consultation with professional organizations from relevant child and family development disciplines. Such consultation will help staff of the Head Start Bureau learn about emerging knowledge and apply this to the planning, implementation, and evaluation of this and other programs.

Finally, it is equally important that the Head Start Bureau re-evaluate its own regulations and procedures to support local creativity and responsiveness to the needs of very young children and their families. As a first step, the Advisory Committee recommends that the Secretary explore opportunities for Early Head Start programs to combine these resources with other public and private funding sources in order to serve more very young children and their families who might benefit from Early Head Start services and support. This is especially important as many Advisory Committee members feel that all children within a very low income community should be afforded access to these services. By allowing and encouraging Early Head Start communities to partner with other funding streams, it may be possible in some communities to provide access to most or all families with very young children.

Funding

All of the above issues—from the principles to the program concept and Federal commitments—are moot when there are not adequate resources to develop and sustain high quality in each program. Advisory Committee members see the role of Early Head Start as a national laboratory and catalyst for change. The members point out that a Federal commitment is needed to ensure that resources are available in the short- and long-term to support the provision of high quality, well-integrated services.

Conclusion

Early Head Start represents a new era of support for America's youngest children and their families. It sets forth a vision that honors the unique strengths of very young children, their families and communities, and the staff who work with them. It calls for programs to provide family-centered and community-based services and supports that are individualized, of highest quality, and that promote positive health and development. And it commands significant attention at the Federal level for training, technical assistance, monitoring, and research and evaluation to ensure these programs can flourish.

The members of the Advisory Committee on Services for Families with Infants and Toddlers are proud to set forth this vision and implementation design for Early Head Start. We call on the Secretary and the nation to move ahead rapidly with a series of steps to make this vision a reality. So much is at stake for our youngest children and their families.

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Federal Register

Friday
March 17, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Chapter I

Indian Self-Determination Negotiated Rulemaking Committee Meeting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

Meeting of the Indian Self-Determination Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Interior (DOI) and the Secretary of Health and Human Services (DHHS) have established an Indian Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93–638, 25 U.S.C. 450 et seq., as amended. The Departments have determined that the establishment of this Committee is in the public interest and will assist the agencies in developing regulations authorized under Section 107 of the ISDEAA.

DATES: The Committee will have its first meeting as shown below:

Tuesday, April 11, 1995, 8:30 A.M. to 5:00 P.M.
Wednesday, April 12, 1995, 8:30 A.M. to 5:00 P.M.
Thursday, April 13, 1995, 8:30 A.M. to 5:00 P.M.

ADDRESSES: The April 11–13, 1995, meeting will be held at the: Holiday Inn, Arlington at Ballston, I–66 and Glebe Road, 4610 North Fairfax Drive, Arlington, Virginia 22203, Telephone: (703) 243–9800, Toll Free #: (800) 465–4329.

Written statements may be summitted to Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4627–MIB, Washington, DC 20240, Telephone (202) 208–3708.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4627–MIB, Washington, DC 20240, Telephone (202) 208–3708.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above. Summaries of Committee meetings will be available for public inspection and copying ten days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: March 13, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6578 Filed 3–16–95; 8:45 am]

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Friday
March 17, 1995

Part VI

Department of Health and Human Services

Food and Drug Administration

Medical Devices: Mammography Quality Standards Act of 1992, Inspection Fees; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0335]

Medical Devices; Mammography Quality Standards Act of 1992; Inspection Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fees it will assess for inspections of mammography facilities during fiscal year 1995 (FY 95). The Mammography Quality Standards Act of 1992 (MQSA) requires FDA to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. This notice explains which facilities are subject to payment of inspection fees, provides information on the costs included in developing inspection fees, and provides information on the inspection, billing, and collection processes.

DATES: Effective October 1, 1994, for all inspections conducted under 42 U.S.C. 263b(g). Written comments by June 15, 1995.

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

FOR FURTHER INFORMATION CONTACT: John L. McCrohan, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, fax 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA amended Title III of the Public Health Services Act (the PHS Act) (42 U.S.C. 262 *et seq*.) by adding a new section 354 (42 U.S.C. 263b) to require uniform national quality standards for mammography facilities. The MQSA requires all mammography facilities, other than facilities of the Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services as meeting quality standards. Facilities must obtain a certificate by October 1, 1994, in order to continue to legally provide mammography services. See 58 FR 67558, December 21, 1993, ''Mammography Facilities—Requirements for Accrediting Bodies and Quality Standards and Certification Requirements,'' interim rules and 59 FR 49808, September 30, 1994, ''Quality Standards and Certification Requirements for Mammography Facilities,'' amending the interim rules. The MQSA requires FDA to establish a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation bodies; and standards for equipment, personnel, quality assurance, and recordkeeping and reporting by mammography facilities.

The MQSA requires annual facility inspections to determine compliance with the quality standards. Section 354(r) of the PHS Act requires FDA to assess and collect fees for inspections of all mammography facilities, other than Governmental entities as determined by FDA, to cover the costs of inspections. FDA is providing notice of the fees to be assessed during FY 95 and additional information relating to those fees. Although the MQSA does not require FDA to solicit comments on fee assessment and collection, FDA is inviting comments from interested persons in order to have the benefit of additional views and information.

II. Inspections under the Mammography Quality Standards Act of 1992

Section 354(g)(1) of the PHS Act requires FDA, or a State operating under a delegation of authority from FDA, to conduct an annual inspection of each mammography facility. The purpose of the annual inspection is to determine facility compliance with quality standards established under the MQSA. The quality standards to be enforced during FY 95 were established by an interim rule published at 58 FR 67565, December 21, 1993, ''Quality Standards and Certification Requirements for Mammography Facilities,'' amended by an interim rule published at 59 FR 49808, September 30, 1994, ''Quality Standards and Certification Requirements for Mammography Facilities.'' Inspections will be conducted by inspectors who have met Federal training requirements and who are certified by FDA.

Under ordinary circumstances, inspections will be conducted during the regular business hours of the facility or at a mutually agreed time. FDA normally will provide 5 working days advance notice of each annual inspection. If a significant deficiency is identified during an inspection, FDA will provide information on necessary corrective action and in appropriate cases, will schedule a followup inspection after the facility has had a reasonable time to correct the deficiency. FDA normally will provide 5 working days advance notice of each followup inspection. FDA may make unannounced inspections or may provide shorter notice if prompt action is necessary to protect the public health (see 42 U.S.C. 263b(g)(4)).

III. Costs Included in FY 1995 Inspection Fees

Section 354(r) of the PHS Act requires FDA to assess and collect fees from persons who own or lease mammography facilities, or their agents, to cover the cost of annual and followup inspections conducted by FDA or a State acting under a delegation from FDA. Section 354(r) limits FDA's discretion in setting inspection fees in three ways: (1) Fees must be set so that, for a given fiscal year, the aggregate amount of fees collected will equal the aggregate costs of inspections conducted; (2) a facility's liability for fees must be reasonably based on the proportion of the inspection costs which relate to the facility; and (3) Governmental entities, as determined by FDA, are exempt from payment of fees.

FDA has determined that the following categories of costs are recoverable under section 354(r) of the PHS Act and has included them in the fees to be assessed in FY 95:

- Personnel costs of annual and followup inspections of mammography facilities, including administration and support.
- Purchase of equipment, development of instrument calibration procedures, calibration of instruments used in the inspections, and modification of training facilities and laboratories to support MQSA operations.
- Design, programming, and maintenance of data systems necessary to schedule and track inspections and to collect data during inspections.
- Training and certification of inspectors (both FDA and State inspectors).
- Costs of billing facilities for fees due for annual and followup inspections and collecting facility payments.
- Tracking, coordination, and direction of inspections.
- Overhead and support attributable to facility inspections.

FDA has calculated the fixed and variable amounts of these costs. Because facilities and most scientific equipment are durable and can be used for a period of years, it is not appropriate to recover the full costs of such expenditures in the year of purchase. To do so would result in the MQSA inspection fee varying widely from one year to the next. Instead, these costs will be

recovered over the useful life of the asset. FDA has used these data on fixed and variable costs to determine fees for two categories of inspection:

• Annual inspection of each mammography facility. The recoverable portions of all fixed costs of the inspection program and appropriate variable costs are recovered in the annual inspection fee. This fee will vary depending on how many mammography units are used by a facility. All mammography facilities, except Governmental entities, will be subject to this fee.

• Followup inspections. If the annual inspection of a facility identifies a deficiency that necessitates a followup inspection, that facility will be assessed an additional fee to recover the costs of that additional inspection. Only variable costs directly related to followup inspections are recovered. Governmental entities and all facilities that do not require a followup inspection are not subject to this fee.

IV. Inspection Fees to be Assessed During FY 95

After consulting with the National Mammography Quality Advisory Committee, FDA has determined that, for FY 95 (October 1, 1994 to September 30, 1995), a facility's inspection fees will be based on the number of mammography units used by the facility. Based on information submitted by States during contract negotiations and a 1993 survey by the National Cancer Institute, FDA estimates that there are 13,252 mammography units and 10,666 facilities subject to inspection in FY 1995. Most facilities (83 percent) have only a single mammography unit and fewer than 5 percent of facilities have more than two units.

FDA has determined that the following fees will be assessed for facility inspections conducted in fiscal year 1995:

Type of Inspection	Fee
Annual	$1,178 for the first unit, plus $152 for each additional unit.
Followup	$670 for each follow-up inspection.

The fee schedule is subject to change each fiscal year to ensure that the aggregate amount of fees collected during any fiscal year equals the aggregate amount of costs for such fiscal year for inspection of facilities

FDA reviewed and considered several methodologies for setting annual inspection fees for FY 95, including fee structures that would do one or more of the following: (1) Account for differences in facility size (the adopted methodology); (2) establish a flat fee that would not vary by facility size; (3) account for regional variations in inspection costs; (4) eliminate separate followup inspection fees by increasing the annual inspection fee. FDA decided to charge separately for annual and followup inspections because FDA believes it is more appropriate and equitable for the costs of followup inspections to be borne entirely by the facilities that require such inspections. In addition, this approach eliminated the need for FDA to attempt to estimate the number of followup inspections that will be conducted. FDA chose to use a uniform, national fee structure because, at this time, the agency lacks sufficient information to adopt any other approach.

For followup inspections, FDA considered a flat fee (the adopted methodology) and an hourly rate that would vary the fee by the length of the inspection. FDA has chosen to adopt a flat fee for followup inspections because this approach eliminates concerns about variations among inspectors and differential treatment of facilities.

The methodology adopted by FDA to determine inspection fees does not pass on the costs of inspecting Governmental entities to other facilities. The entire cost of inspecting Governmental entities will be borne by FDA and paid out of appropriated funds.

The agency invites comments on alternative methods of determining inspection fees under the MQSA and may consider altering its methodology in the future, after actual inspection experience provides more accurate data about differences among facilities and variations in costs by State, region, or other factors.

V. Facilities Subject to Payment of Inspection Fees

Under the MQSA, all certified mammography facilities except Governmental entities, as determined by FDA, are subject to payment of inspection fees (see 42 U.S.C. 263b(r)).

FDA has developed a definition that will be used to determine whether a facility qualifies as a ''Governmental entity'' for the purpose of determining whether a facility is exempt from payment of inspection fees under 42 U.S.C. 263b(r). A Governmental entity is a mammography facility subject to inspection under section 354(g)(1) of the Public Health Service Act (42 U.S.C. 263b(g)(1), that meets either of the following criteria: (1) Is operated by any Federal department, State, district, territory, possession, Federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, or (2) provides services under the Breast and Cervical Cancer Mortality Prevention Act of 1990, 42 U.S.C. 300k *et seq*., and at least 50 percent of the mammography screening examinations provided during the preceding 12 months were funded under that statute.

In making these determinations, FDA reviewed the legislative history of the Mammography Quality Standards Act of 1992. There is nothing in the legislative history to indicate that Congress intended the exemption for Governmental entities to be read expansively. Nor is there anything in the legislative history to suggest that Congress intended FDA to distinguish among mammography facilities with respect to this exemption for any particular policy reason, such as the type of organization operating the facility (e.g., facilities that qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code), location (e.g., rural facilities), or size (e.g., facilities that handle relatively few patients). Accordingly, FDA has interpreted the exemption provision in a manner that will recoup the costs of inspections from as many facilities as possible. This approach will reduce the likelihood that fiscal constraints will undermine the agency's ability to perform adequate inspections required by the law.

FDA determined that the definition of Governmental entity under the MQSA should include facilities that are highly dependent on funding provided under the Breast and Cervical Cancer Mortality Prevention Act of 1990 (BCCMPA) (see 42 U.S.C. 300k *et seq*.). That statute authorizes grants to States for programs to screen women for breast and cervical cancer as a preventive health measure (see 42 U.S.C. 300k). Low income women are given priority for screening services, including free services to any woman with income below the official poverty line (see 42 U.S.C. 300n). Advisory committee discussions raised concern that assessing an inspection fee on certain facilities receiving these grants would be at variance with, and could undermine, the initiative that Congress legislated through BCCMPA, and that the Department of Health and Human Services implemented, to provide mammography screening to under-served populations. In response to this concern, FDA decided to include in its definition of Governmental entity, those facilities with BCCMPA grants that provide at least 50 percent of their mammography screening services to the

population targeted by BCCMPA. FDA believes relatively few (less than 100) facilities will qualify as Governmental entities because of their dependence on BCCMPA grants. These facilities pursue the same public health objectives as the MQSA and are largely dependent on Federal payments. Assessing an inspection fee would do little more than shift the costs of one Federal program to another Federal program while subjecting the Federal government to the transaction costs involved with such transfers.

The agency invites comments on alternative ways to define Governmental entities under the MQSA and may consider altering its determination in the future, after actual inspection experience provides more accurate data about other types of facilities that might be included in the category which is exempt from inspection fees under 42 U.S.C. 263b(r).

Prior to the first annual inspection of a facility, FDA will contact the facility and provide an opportunity for the facility to attest that it qualifies as a Governmental entity. Facilities that FDA finds to be Governmental entities will not be billed for inspections.

VI. Billing and Collection Procedures

Within 30 days following inspection, FDA will mail a bill to the inspected facility (Governmental entities will not receive bills). The bill will set forth the type of inspection conducted (annual or followup), the fee to be paid, and the date payment is due (30 days after billing date). Inspection fees will be billed to and collected from the party that operates the facility. If the facility is owned or controlled by an entity other than the operator, it is up to the parties to establish, through contract or otherwise, how the costs of facility inspections will be allocated.

If full payment is not received by the due date, a second bill will be sent. At that time, interest will begin to accrue at the prevailing rate set by the Department of the Treasury (currently, the prevailing rate is 13 percent), a 6 percent late payment penalty will be assessed in accordance with 45 CFR 30.13, and a $20 administrative fee will be assessed for each 30-day period that a balance remains due. If payment is not received within 30 days of a third and final bill, FDA may initiate action to collect unpaid balances (with interest and penalties), including the use of collection agencies and reporting of delinquencies to commercial credit reporting agencies.

VII. Review and Appeals Procedures

FDA will review each declaration that a facility qualifies as a Governmental entity. If FDA disallows a facility's claim that it is a Governmental entity, a bill will be sent to the facility with payment due within 30 days.

If FDA determines that a facility is not a Governmental entity, but the facility believes it qualifies for exemption under the definition of Governmental entity set forth above, the facility may appeal FDA's determination by explaining and certifying the basis for its belief in a letter directed to the FDA Ombudsman, c/o Mammography Quality Assurance Program, Food and Drug Administration, P.O. Box 6057, Columbia, MD 21045–6057, postmarked within 30 days of FDA's notice to the facility that the facility does not qualify as a Governmental entity. The FDA Ombudsman will review a facility's claim that it is a Governmental entity and will normally reach a decision within 60 days. If the Ombudsman determines that a facility does not qualify as a Governmental entity, the Ombudsman shall provide a statement of the grounds for that determination. The Ombudsman's decision will constitute the agency's final decision on the matter. During the time required for the Ombudsman's review, FDA's efforts to collect the fee will be suspended.

VIII. Request for Comments

Although MQSA does not require FDA to solicit comments on fee exemption, assessment and collection, FDA is inviting comments from interested persons in order to have the benefit of additional views and information. FDA may consider altering its methodology of defining Governmental entities, and assessing and collecting fees under MQSA in future years, after actual inspection experience provides more accurate data about differences among facilities and variations in costs by State, region, or other factors.

Interested persons may on or before June 15, 1995 submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and a full explanation of the costs included and the methodology employed in determining these fees are on file with the Dockets Management Branch (address above) and may be seen in that office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Dated: March 13, 1995.

William B. Schultz,

Deputy Commissoner for Policy.

[FR Doc. 95–6614 Filed 3–16–95; 8:45 am]

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Friday
March 17, 1995

Part VII

Environmental Protection Agency

40 CFR Part 123

Amendment to Requirements for Authorized State Permit Programs Under Section 402 of the Clean Water Act; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–5148–6]

Amendment to Requirements for Authorized State Permit Programs Under Section 402 of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the regulations concerning the minimum requirements for federally authorized State permitting programs under section 402 of the Clean Water Act. The proposed rule would explicitly require that State law must provide any interested person an opportunity to challenge the approval or denial of 402 permits issued by the State in State court. The intent of the proposed rule is to ensure that any interested person has the opportunity to challenge judicially the final action on State-issued permits, to the same extent as if the permit were issued by EPA. Most States already have this authority which allows for local resolution of issues. As a result, EPA believes today's proposed rule will apply to a very small number of States with authorization to administer the National Pollutant Discharge Elimination System (NPDES) permit program. EPA is not proposing at this time to establish this requirement for Tribal permitting programs under section 402, but is soliciting comments on various issues related to extending this requirement to Tribes. No Tribes are currently authorized to operate the NPDES program.

DATES: Written comments on this proposed rule must be submitted on or before June 15, 1995.

ADDRESSES: Commenters are requested to submit three copies of their comments to the Comment Clerk for the section 402 Amendment; Water Docket; MC–4101, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Commenters who would like acknowledgement of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the supporting information for this proposal is available for review at EPA's Water Docket, room L–102, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Laura J. Phillips, Office of Wastewater Management (OWM), Permits Division (4203), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–9541.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

I. Summary and Explanation of Today's Action

1. Background

Congress enacted the Clean Water Act, 33 U.S.C. 1251 *et seq.* (''CWA'' or ''the Act''), ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' Section 101(a), 33 U.S.C. 1251(a). To achieve this objective, the Act authorizes EPA, or a State approved by EPA, to issue permits controlling the discharge of pollutants to navigable waters. Section 402(a)(1), 33 U.S.C. 1342(a)(1). A State that wishes to administer its own permit program for discharges of pollutants, other than dredged or fill material, to navigable waters may submit a description of the program it proposes to administer to EPA for approval according to criteria set forth in the statute. Section 402(b), 33 U.S.C. 1342(b).

EPA is authorized to treat Indian Tribes in the same manner as States for purposes of certain provisions of the CWA, including section 402. Section 518(e), 33 U.S.C. 1377(e).

EPA's regulations at 40 CFR part 123 establish minimum requirements for federally authorized State permit programs under section 402 of the CWA. These regulations include federally recognized Indian Tribes within the definition of ''State.'' 40 CFR 122.2. EPA is proposing to add language to part 123 that makes clear the intent that, to receive or retain Federal authorization, a State must have laws that afford any interested person the opportunity to challenge in State court the final approval or denial of 402 permits by the State. The intent of this proposal is to ensure that State programs provide the public with an opportunity to challenge final action on 402 permits in State courts, to the same extent as if the permit were federally-issued. EPA is inviting comment on various issues related to extending this requirement to Tribes.

2. Rationale and Authority for Proposed Rule

EPA has become aware of instances in which citizens are barred from challenging State-issued permits because of restrictive standing requirements in State law. EPA believes this is a gap in the regulations setting minimum requirements for State 402 permit programs that needs to be addressed.

A coalition of environmental groups has filed two petitions requesting that EPA withdraw the Virginia State 402 permit program, citing a limitation on citizen standing, among other alleged deficiencies. In particular, they allege that recent changes in the law in the State of Virginia have significantly narrowed the public's opportunity to challenge State-issued 402 permits. Virginia's State Water Control Law, the State law under which Virginia's authorized program is administered, authorizes only an ''owner aggrieved'' to challenge permits in court. VA Code 62.1–44.29. In 1990, the Virginia legislature amended and narrowed the statutory definition of ''owner.'' The environmental groups allege that under three opinions of the Virginia Court of Appeals and the State Water Control Law, only a permittee has standing to challenge the issuance or denial of a 402 permit in State court. *Environmental Defense Fund* v. *State Water Control Board*, 12 Va. App. 456, 404 SE.2d 728 (1991), *reh'g en banc denied*, 1991 Va. App. LEXIS 129; *Town of Fries* v. *State Water Control Board*, 13 Va. App. 213, 409 SE.2d 634 (1991). See *Citizens for Clean Air* v. *State Air Pollution Control Board*, 13 Va. App. 430, 412 SE.2d 715 (1991)(interpreting similar language in Virginia Air Pollution Control Law). They allege that under these three decisions, riparian landowners, local governments that wish to draw drinking water from the waters in question, downstream permittees, local business and property owners associations, local civic associations and environmental organizations whose members use the waters in question may not challenge a State-issued permit in State court.

The Agency is committed to moving away from permit-by-permit oversight. At the same time, it is critical that EPA continue in its partnership role to support effective State implementation. It is also essential to provide for meaningful local participation and

resolution of permit specific issues. An important component of effective public participation is that the public have access to judicial forums to challenge State-issued permits to the same extent as would be the case were EPA the permitting authority. This approach ensures that as EPA reduces its oversight, both EPA and the States remain directly accountable on a permit-by-permit basis to the public. To this end, EPA believes the purposes of the CWA can best be accomplished by providing an opportunity for review in State court of the final approval or denial of 402 permits by all interested persons, as well as permittees and permit applicants, in order to ensure an adequate and meaningful opportunity for public review and comment on issues addressed by the permit. The same concerns arise when the program is federally administered; that is why Congress provided for judicial review of Federal permit actions in Federal court.

When citizens are denied the opportunity to challenge executive agency decisions in court, their ability to influence permitting decisions through other required elements of public participation, such as through public comments and public hearings on proposed permits, may be seriously compromised. If citizens perceive that a State is not addressing their concerns about 402 permits because the citizens have no recourse to an impartial judiciary, that perception also has a chilling effect on all the remaining forms of public participation in the permitting process. EPA believes that in order to effectuate the policies and purposes of the CWA, States must address the legitimate concerns of citizens about 402 permits. Accordingly, EPA is proposing to add language to part 123 explicitly requiring that all interested persons must have an opportunity to challenge the final approval or denial of 402 permits in State court. In the judgment of EPA, this effectively balances the CWA's strong policy favoring public participation in the development of water pollution controls with the policy to ''recognize, preserve and protect the primary responsibilities and rights of the States to prevent, reduce and eliminate pollution...'' Section 101(b), 33 U.S.C. 1251(b). It effectuates EPA's strong policy interest in deferring to State administration of authorized NPDES programs while ensuring that citizens will be able to influence permitting decisions through public participation and will have access to the courts to challenge State–issued permits to the same extent as if the program were federally administered.

EPA's direct authority to specify this requirement is found at sections 101(e), 304(i), 402(b) and (c), and 501(a) of the CWA.

Section 501(a), 33 U.S.C. 1361(a), confers general authority on the Administrator to prescribe such regulations as are necessary to carry out her functions under the CWA. Section 304(i), 33 U.S.C. 1314(i), provides that EPA shall promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402. Section 101(e) provides that ''[p]ublic participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States . . .'' 33 U.S.C. 1251(e). To establish minimum public participation requirements consistent with these statutory goals, section 101(e) directs the Administrator, in cooperation with the States, to establish minimum guidelines for public participation. *Id.*

Congress included the provisions relating to public participation in section 101(e) because it recognized that ''[a] high degree of informed public participation in the control process is essential to the accomplishment of the objectives we seek—a restored and protected natural environment.'' S. Rep. 414, 92d Cong., 2d Sess. 12 (1972), reprinted in *A Legislative History of the Water Pollution Control Act Amendments of 1972*, Cong. Research Service, Comm. Print No. 1, 93d Cong., 1st Sess. 108 (1973)(hereinafter cited as *1972 Legis. Hist.*) at 1430. The Senate Conference Report observed further that implementation of water pollution control measures would depend, ''to a great extent, upon the pressures and persistence which an interested public can exert upon the governmental process. The Environmental Protection Agency and the State should actively seek, encourage and assist the involvement and participation of the public in the process of setting water quality requirements and in their subsequent implementation and enforcement.'' *Id.* See also Senate Conference Report at 72, *1972 Legis. Hist.* at 1490 (''The scrutiny of the public... is extremely important in insuring expeditious implementation of the authority [conferred by section 402] and a high level of performance by all levels of government and discharge sources.'') Similarly, the House directed EPA and the States ''to encourage and assist the public so that it may fully participate in the administrative process.'' H. Rep. 911, 92d Cong., 2d Sess. 79, *1972 Legis. Hist.* at 766. Congressman Dingell, a leading sponsor of the CWA, characterized section 101(e) as applying ''across the board.'' *Id.* at 108. See also *id.* at 249.

Section 402(b) establishes the statutory standards applicable to the approval of State 402 permitting programs. These standards also reflect the importance that Congress attached to effective public participation in establishing controls on water pollution. States wishing to administer a 402 permit program must establish to the satisfaction of the Administrator that they have enacted laws that provide adequate authority to carry out the State program. Section 402(b), 33 U.S.C. 1342(b). Section 402(b)(3) contains an explicit requirement for public participation in the development of State permits. Subsection (3) allows disapproval upon a finding of inadequate authority ''[t]o insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.'' Id. Section 402(c), 33 U.S.C. 1342(c), authorizes EPA to withdraw a State program if it is not being administered in accordance with applicable requirements.

The courts have also recognized that meaningful and adequate public participation is an essential part of a State program under section 402. See *Natural Resources Defense Council* v. *EPA*, 859 F.2d 156, 175–78 (D.C. Cir. 1988)(approving part 123 regulations regarding citizen intervention in State enforcement actions); *Citizens for a Better Environment* v. *EPA*, 596 F.2d 720, *reh'g denied*, 596 F.2d 725 (7th Cir. 1979)(invalidating EPA approval of a State program in the absence of prior promulgation of guidelines regarding citizen participation in State enforcement actions).

Thus, the CWA vests considerable discretion in the Administrator to set minimum requirements applicable to authorized 402 programs, particularly with respect to public participation and the rights of citizens to influence the permitting process. See *Natural Resources Defense Council* v. *EPA*, 859 F.2d at 175–178.

EPA's proposal is further supported by the statutory provisions governing challenges to 402 permits issued by EPA. Section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), provides that ''any interested person'' may obtain judicial review in the United States Court of

Appeals of the Administrator's action in issuing or denying any permit under section 402. There is no indication that Congress intended that the public's rights to challenge permit actions would be diminished, upon EPA's approval of a State 402 program, to the point that the goal of adequate and effective public participation in the permit issuance process would be compromised. (Similarly, Congress has provided citizens the ability, except in defined circumstances, to commence a civil action in the United States District Court against any person who is alleged to be in violation of any effluent standard or limitation under the CWA, regardless of whether the permitting authority is EPA or the State. Section 505(a), 33 U.S.C. 1365(a)).

The regulations setting minimum requirements for authorized State 402 permit programs, 40 CFR part 123, do not explicitly address requirements for citizen standing to challenge the approval or denial of permits in State court. The current part 123 regulations were originally issued on May 19, 1980. 45 FR 33290. When EPA issued those regulations, the Agency did not contemplate that State law might limit the opportunity for interested citizens to challenge final permit decisions in State court to such a degree that it is substantially narrower than the opportunity afforded under section 509 to challenge federally-issued permits. Accordingly, EPA believes it needs to specify standing requirements in part 123. EPA seeks to add language to part 123 that would explicitly require that in order to receive or retain authorization, a State must afford any interested person the opportunity to challenge the final approval or denial of 402 permits in State court. The proposal would codify the Agency's interpretation of the CWA, as set forth above. EPA believes the Clean Water Act authorizes the Agency to specify this requirement as a precondition to the assumption and continued operation of a 402 permitting program by a State.

The proposed rule would apply to final actions with respect to modification, revocation and reissuance and termination of permits as well as the approval or denial of permits in the first instance.

3. Scope of Standing Requirement

EPA's proposal makes it clear that ''any interested person'' must be afforded standing to challenge final action by a State in issuing or denying a 402 permit; this proposal would ensure consistency with the standing afforded the public to challenge federally-issued permits in Federal court. The legislative history of the CWA states explicitly that the term ''interested person'' in section 509(b) is intended to embody the injury in fact rule of the Administrative Procedure Act, as set forth by the Supreme Court in T3Sierra Club v. *Morton*, 405 U.S. 727 (1972). S. Conference Rep. No. 1236, 92d Cong, 2d Sess. 146 (1972), *1972 Legis. Hist.* at 281, 329. *Montgomery Environmental Coalition* v. *Costle*, 646 F.2d 568, 576–78 (D.C. Cir. 1980). See *Trustees for Alaska* v. *EPA*, 749 F.2d 549, 554–55 (9th Cir. 1984). EPA intends that the term ''interested person'' as used in the proposed rule have the same meaning that it has in section 509(b). Today's proposal would ensure that citizen standing to challenge the issuance or denial of State–issued 402 permits is similarly expansive where the State is authorized to administer 402 permit programs.

As interpreted by the United States Supreme Court, the standing requirement of Article III of the Constitution contains three key elements:

> [A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to ''show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,''... and that the injury ''fairly can be traced to the challenged action'' and ''is likely to be redressed by a favorable decision.''

Valley Forge Christian College v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982)(citations omitted. See also *Lujan* v. *Defenders of Wildlife*, 504 U.S. _____, 119 L.Ed.2d 351, 364 (1992).

With respect to the nature of the injury that an ''interested person'' must show to obtain standing, the Supreme Court held in *Sierra Club* v. *Morton*, 405 U.S. at 734–35, that harm to an economic interest is not necessary to confer standing. Harm to an aesthetic, environmental, or recreational interest is sufficient, provided that the party seeking judicial review is among the injured. This holding was most recently reaffirmed by the Supreme Court in *Lujan* v. *Defenders of Wildlife*, 504 U.S. _____, 119 L.Ed.2d at 365 (''[o]f course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purposes of standing.''). See also *Japan Whaling Ass'n* v. *American Cetacean Society*, 478 U.S. 221, 231 n. 4 (1986); *Middlesex County Sewerage Auth.* v. *National Sea Clammers Ass'n*, 453 U.S. 1, 16–17. This low threshold for sufficiency of injury has been applied in many decisions. See, e.g., *Sierra Club* v. *Simkins Industries, Inc.*, 847 F.2d 1109 (4th Cir. 1988), cert. denied, 491 U.S. 904 (1989) (injury to aesthetic and environmental interests is sufficient where pollution would affect a river along which a single group member hiked); *Friends of the Earth* v. *Consolidated Rail Corp.*, 768 F.2d 57, 61 (2d Cir. 1985) (recreational use of a river and offense to aesthetic values are sufficient to demonstrate injury in fact).

4. Exhaustion of Administrative Remedies

A requirement that all interested persons have the opportunity to challenge final permitting actions judicially should be distinguished from a requirement that interested persons must exhaust administrative remedies in order to preserve their opportunity to challenge permitting actions judicially. For example, Federal regulations require that interested persons must raise reasonably ascertainable issues during the public comment period on a draft 402 permit (40 CFR 124.13) and must request an evidentiary hearing on a permit decision they wish to challenge (40 CFR 124.74). Today's proposal does not affect the authority of States to adopt similar, reasonable requirements that interested persons exhaust available administrative remedies in order to preserve their opportunity to challenge final permitting actions in State court.

5. Alternatives Under Consideration

EPA also considered amending part 123 to require that State law must provide an opportunity for judicial review of a final State permit action under section 402 by the permit applicant and any person who participated in the public comment process. See section 502(b)(6) of the Clean Air Act, 42 U.S.C. 7661a(b)(6). The Agency prefers the ''any interested person'' language because it tracks section 509(b)(1) of the CWA, which allows ''any interested person'' to challenge specified final actions of the Administrator, including the issuance or denial of any permit under section 402, in the United States Court of Appeals. It is also consistent with existing regulations under the CWA which allow ''any interested person'' to request an evidentiary hearing on a Regional Administrator's final permit decision. 40 CFR 124.74. As noted above, States would be free under today's proposal to impose reasonable requirements that interested persons must exhaust administrative remedies, such as participation in the public comment process, in order to preserve their opportunity to challenge a final permitting action in State court.

EPA solicits comment on whether it should adopt a requirement, in lieu of the proposed regulatory language, that State law must provide an opportunity for judicial review of a final permitting action under section 402 by the permit applicant and any person who participated in the public comment process.

6. Time Period for Compliance

Under EPA's existing regulations, any approved State 402 program that requires revision to conform to today's proposal, when it is finally promulgated, would need to be revised within one year of the date of final promulgation of today's proposed rule, unless the State must amend or enact a statute in order to make the required revision. In that case, under EPA's existing regulations, the revision must take place within two years. 40 CFR 123.62(e). EPA is considering amending the regulations to require that States revise their programs sooner than specified under 40 CFR 123.62(e) to bring the program into compliance with today's proposed rule. For example, EPA is considering requiring that if a State must amend or enact a statute to make the necessary revisions to its law, this must be done during the first legislative session that begins after the date of promulgation of today's proposal as a final rule. EPA requests comment on whether it should impose a requirement that States revise their programs sooner than specified under 40 CFR 123.62(e) to bring the program into compliance with today's proposed rule, and if so, what would be an appropriate shortened time period for compliance.

II. Request for Comment

EPA solicits comment on all aspects of today's proposal. In particular, EPA seeks comment on the appropriateness of the proposal from a legal and a policy perspective; on the ''any interested person'' language as proposed; on the alternative that would require that State law must provide an opportunity for judicial review of a final permitting action under section 402 by the permit applicant and any person who participated in the public comment process, as discussed above; and on any alternative language that would specify appropriate explicit standing requirements applicable to authorized State 402 programs.

EPA also requests comment on whether it should amend the regulations to require States to revise their programs sooner than would otherwise be required under 40 CFR 123.62(e) to bring the program into compliance with today's proposed rule, when it is finally promulgated.

EPA is not proposing at this time to establish this requirement for Tribal permitting programs under section 402. Tribes are just beginning the development of various Clean Water Act programs and the issues of sovereign immunity and access to Tribal courts must be carefully considered. No Tribes are currently authorized to operate the NPDES program. EPA is soliciting comments on various issues, including the issue of sovereign immunity, related to extending this requirement to Tribes. Based upon the comments received on this proposal, EPA may propose regulatory action in the future with respect to review of Tribally–issued NPDES permits. EPA also invites comment about how it could phase in such a requirement for Tribes, if the Agency moves forward with such a proposal in the future.

EPA is aware that access to Tribal courts may not be as broad as access to State courts. (EPA addressed some issues with regard to Tribal regulation of nonmembers, as well as differences in Tribal criminal enforcement programs, in the preamble to and/or the final regulation on NPDES authority for Tribes, 58 FR 67966, December 22, 1993.) EPA specifically invites comment on (1) these differences with regard to access to Tribal courts for appeal of NPDES permits (which may be issued to nonmembers of the Tribe), (2) the basis of the differences, (3) as well as any alternative procedures that may be used to provide for an appeal of final Tribal NPDES permit actions, if a Tribal court system is not available to a person.

III. Supporting Documentation

1. Compliance With Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations, of recipients thereof; and

(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.

EPA believes that only a very few authorized States may be impacted by this proposed rule. The proposed action is consistent with and effectuates the public participation provisions of the CWA. As a result, EPA has determined that the final rule does not meet the definition of a significant regulation, and, therefore, the Agency is not conducting a Regulatory Impact Analysis.

It has also been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Compliance With Executive Order 12875

Under Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, the Agency is required to develop an effective process to permit elected officials and other representatives of State and Tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA fully supports this objective and has initiated a consultation process with both States and Tribes which will be continued through proposal and the public comment period. The Agency will be contacting each State individually for their views on this proposal. With regard to Indian Tribes, EPA is aware of the complex issues associated with applying this proposal to Tribes and is soliciting comments on those issues. EPA will work both with representatives of Tribes as well as through the Agency's American Indian Environmental Office to assure a full opportunity for review and comment on today's proposal and also to ensure an understanding of Tribal concerns or issues raised by today's proposal rule.

EPA anticipates a reaction from the relatively few NPDES-authorized States which restrict standing to challenge State-issued NPDES permits. Businesses and municipalities in States which restrict standing may argue that allowing standing will make it more difficult to obtain a permit due to court challenges by citizens. However, based on EPA's experience in States which already provide broad standing to challenge permits, EPA does not expect that any significant portion of permits will be challenged in State courts.

EPA believes that it has developed an effective process for receiving comments on this proposed rulemaking and has met the consultation requirements for States, federally recognized Tribes and localities under the terms of Executive Order 12875.

3. Paperwork Reduction Act

This proposed rule does not contain information requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

4. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities.

This proposed rule applies only to States with authorization to administer the NPDES permit program. States are not considered small entities under the RFA. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 123

Environmental protection, Administrative practice and procedure, Water pollution control.

Dated: March 9, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, part 123, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.30 is added to read as follows:

§ 123.30 Judicial review of approval or denial of permits.

All States that administer or seek to administer a program under this part must provide any interested person an opportunity for judicial review in State Court of the final approval or denial of permits by the State. This requirement does not apply to Indian Tribes.

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Part VIII

Office of Management and Budget

Audits of Institutions of Higher Education and Other Non-Profit Institutions; Notice

OFFICE OF MANAGEMENT AND BUDGET

Audits of Institutions of Higher Education and Other Non-Profit Institutions

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to OMB Circular No. A–133.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular No. A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

Also, this action provides notice of OMB's intent, after considering comments to this proposal, to seek modifications to the Single Audit Act of 1984 (Act) and OMB Circular No. A–128, ''Audits of State and Local Governments,'' consistent with this proposed revision. OMB's intent is to obtain consistency between audits of State and local governments and non-profit organizations such that one law and one circular can cover both. This intent includes Indian tribal governments which are currently covered under the Act and OMB Circular No. A–128. Interested parties are encouraged to comment on this stated intent of OMB.

The National State Auditors Association issued a position paper on the single audit process in February 1993; the president's Council on Integrity and Efficiency Standards Subcommittee issued a study titled ''Study on Improving the Single Audit Process'' in September 1993; the General Accounting Office (GAO) issued a report titled ''Single Audit: Refinements Can Improve Usefulness'' in June 1994. The recommendations in these studies were considered in developing this proposed revision.

DATES: All comments on this proposal should be in writing, and must be received by May 16, 1995. Late comments will be considered to the extent practicable. Where possible, comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments into a computer format for analysis, respondents are asked to send a copy of comments on either a 3.5 or 5.25 inch diskette in either WordPerfect 5.1, WordPerfect for Windows, or ASCII format. When a diskette cannot be provided, it would be helpful if the comments were printed in pica or an equivalent 10 characters per inch type on white paper so the document can be easily scanned into a computer format. When comments are sent in by facsimile, they should be followed up with a diskette or printed copy, as indicated above.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting 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: Sheila O. Conley, Office of Federal Financial Management, Financial Standards and Reporting Branch, telephone (202) 395–3993 and fax (202) 395–4915. A redline/strikeout version showing the detailed changes between the current Circular and the proposed revision is available by written request to the Office of Federal Financial Management.

SUPPLEMENTARY INFORMATION: The proposed revision requires non-profit organizations receiving $300,000 or more in a year in Federal awards to have an annual audit, sets forth requirements for both the performance and reporting of this audit, and provides for follow up on audit findings. Each non-profit organization is responsible for having its audit conducted and for reviewing audits of its subrecipients.

Significant Proposed Revisions

The substantive differences between the current Circular and the proposed revision are indicated in the following:

A. Increased Threshold for Audit

The threshold for when a non-profit organization is required to have an audit is proposed to be raised from $25,000 to $300,000 in paragraph 2, ''Audit Requirements.'' This change is consistent with the findings and recommendations of the General Accounting Office's (GAO) single audit study that a threshold of $300,000 would cover 95 percent of all direct Federal financial assistance to local governments. When the total Federal awards received are small, the cost of audits required by this Circular have often been high in proportion to the awards received. This change will remove the requirement for non-profit organizations to obtain an audit when the total Federal awards received are small. However, non-profit organizations will continue to be required to properly account for their Federal awards, comply with applicable laws and regulations, and cooperate with any audits of Federal awards that the Federal Government may choose to perform. Respondents are encouraged to comment whether the proposed threshold for audit of $300,000 is appropriate or whether the threshold for audit should be different and, if so, what threshold you recommend (e.g., $500,000 or $1 million).

To mitigate risk to a Federal program which is structured such that substantial service delivery and expenditure of Federal funds are made by subrecipients receiving less than $300,000, paragraph 2 includes a provision to allow Federal agencies, with the approval of the Office of Management and Budget (OMB), to set appropriate audit requirements for these Federal programs awarded to subrecipients receiving less than $300,000.

The primary objective of revising the Circular is to reduce regulatory burden on recipients of Federal awards, while maintaining an appropriate level of accountability over Federal awards. The proposed revision seeks to achieve this objective by raising the threshold for audit to $300,000. However, OMB is also considering an additional approach to reduce audit burden whereby non-profit organizations meeting the criteria for low-risk auditees presented in Appendix 3 would be allowed, with the approval of the cognizant or oversight agency, to conduct a full-scope audit in accordance with this Circular on a triennial basis, which covers only the last year of the triennial period.

In the ''off-years,'' or years in which a full-scope audit in accordance with this Circular is not required, a non-profit organization receiving $300,000 or more in Federal awards would be required to have a financial statement audit conducted in accordance with generally accepted government auditing standards (GAGAS). In addition, the off-year audit would include such additional procedures necessary to comply with the scope of work described in subparagraph 12.c, ''Internal Controls,'' of the proposed revision. If the results of audit work conducted in an off-year identify conditions that prevent the non-profit organization from meeting the criteria for a low-risk auditee, then a full-scope audit in accordance with this Circular would be required for the year in which the deficiencies occurred and subsequent years until the non-profit organization met the criteria in Appendix 3.

Respondents are encouraged to comment whether the triennial audit approach would achieve its intended

objective and could be feasibly implemented, particularly with respect to the application of a risk-based audit approach to determine major programs, described in the following section. Respondents are also encouraged to comment whether the triennial audit approach should be: (1) Implemented with the revised Circular, (2) phased in using pilot projects, or (3) applicable to non-profit organizations receiving more or less than a specified amount of Federal awards and, if so, what level of Federal awards you recommend (e.g., $10,000,000).

B. New Risk-Based Approach To Determine Major Programs

A revised process for determining major programs is proposed in Appendices 1 and 2. Currently the determination of major programs, the programs which receive primary audit coverage under the Circular, is based solely on the dollar amount of a Federal program's expenditures. Under this proposal, major programs are determined based on a risk assessment considering prior audit experience, oversight performed by Federal agencies and others, and the inherent risk of the Federal program. Also, a provision is made to require Federal programs that in aggregate have expenditures that total at least 50 percent of total Federal program expenditures to be covered as major programs. This 50 percent minimum is reduced to 25 percent for non-profit organizations meeting the criteria in Appendix 3 and classified as low-risk auditees. Respondents are encouraged to comment whether the Circular should be revised to permit organizations that qualify as low-risk auditees to reduce the scope of audit below the 50 percent minimum and, if so, whether the proposed 25 percent minimum is appropriate for low-risk auditees.

The proposed risk-based approach requires the use of judgment by auditors in determining major programs. However, several controls are included in the revised Circular to mitigate the risk of insufficient audit coverage of Federal programs including:

(1) The requirement that Federal programs with aggregate expenditures of at least 50 percent of total Federal program expenditures be covered as major programs (25 percent for low-risk auditees);

(2) The provision that allows Federal agencies and pass-thru entities to require an auditee to have a particular Federal program audited as a major program in lieu of conducting or contracting for additional audits, provided that the requesting agency agrees to pay the full incremental cost;

(3) The requirement that Federal programs with Federal expenditures exceeding three percent of total Federal expenditures or $300,000, whichever is greater, (Type A programs) shall be covered as major programs at least once every three years; and

(4) The inclusion of a model or process for auditors to use to determine major programs is provided in Appendices 1 and 2.

The objective of this change to a risk-based approach is to focus the audit effort on areas of greatest risk of noncompliance, provide audit coverage to high-risk programs previously below the dollar threshold of major programs, and permit reduction of audit effort when previous audits have not shown problems. An alternative to this risk-based approach would be to continue using the current approach of determining major programs based solely on dollar amount of a Federal program's expenditures and implement voluntary pilot projects to test the risk-based approach. Respondents are encouraged to comment whether the risk-based approach should be implemented with the revised Circular or phased in using pilot projects.

C. Required Level of Internal Control Testing

Clarification is provided in paragraph 12, ''Scope of Audit,'' that the level of testing the auditor is required to perform on the internal control structure over major programs is based upon the auditor's planning for a low assessed level of control risk. Respondents who are auditors are encouraged to comment and provide examples of how many transactions they are currently testing for major programs and how many transactions they would expect to test based upon the proposed revision.

D. Guidance on the Schedule of Federal Awards

Guidance is added in paragraph 13, ''Financial Statements and Auditor's Reporting,'' on the minimum requirements for the Schedule of Federal Awards. Since GAO's single audit study recommended that OMB prescribe the form and content of the schedule, respondents are encouraged to comment whether the revised Circular should prescribe additional requirements for the schedule and a description of such additional requirements.

E. Attestation on Internal Controls and Compliance

GAO's single audit study recommended that, for entities receiving in excess of $50 million a year in Federal awards, the entity should publicly report the extent to which the entity has in place internal controls over Federal awards and that the auditor should attest to the fairness of such a representation. Similarly, others have suggested to OMB that the work on compliance for Federal awards be an engagement under the American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements (SSAE) No. 3, ''Compliance Attestation.'' Under a SSAE No. 3 engagement, management must perform an evaluation of the entity's compliance with the specified requirements and make an assertion about compliance. Respondents are encouraged to comment as to whether organization-wide and program-specific audits should require a management assertion and auditor attestation for internal controls and/or compliance. The proposed revision does not require a management assertion or auditor attestation on internal controls or compliance.

F. Modified Requirements Related to Audit Findings

The proposed revisions in paragraph 13, ''Financial Statements and Auditor's Reporting,'' provide for reporting of audit findings related to Federal awards in a single schedule of findings and questioned costs, set thresholds for which audit findings will be included in the audit report, describe what information the auditor should include in an audit finding, and provide for audit follow-up on audit findings. Paragraph 14, ''Audit Findings Follow-up,'' clarifies the non-profit organization's responsibility for follow-up on audit findings which includes preparing a corrective action plan for current audit findings and a summary schedule of prior audit findings. Paragraph 15, ''Management Decision,'' provides guidance to improve the audit resolution process.

G. Other Modified Requirements and Guidance

The definition of non-profit organization in paragraph 1 is changed to include non-profit hospitals. However, under paragraph 3, ''Basis for Determining Awards Received,'' Medicaid and Medicare are normally excluded from awards received. Paragraph 3 also provides guidance on

determining awards received for other types of Federal programs.

New guidance is added in paragraph 4, ''Subrecipient and Vendor Determination,'' paragraph 5, ''Auditee Responsibilities,'' paragraph 6, ''Federal Agency and Pass-Thru Entity Responsibilities,'' and paragraph 18, ''Program-Specific Audit.''

Paragraph 6 makes provision for assignment of cognizant agencies based on dollar thresholds of awards received. Under this proposal, entities receiving more than $25 million a year in Federal awards shall be assigned a cognizant agency based on which Federal agency provides the predominant amount of direct funding to the recipient. Currently OMB is responsible for assigning cognizant agencies and it has been unable to make the assignments in a timely manner.

The importance of the compliance supplement is enhanced in paragraph 6, ''Federal Agency and Pass-Thru Entity Responsibilities,'' by requiring Federal agencies to designate a person responsible for annually informing OMB of updates needed, and in paragraph 12, ''Scope of Audit,'' by clarifying the purpose and authority of the compliance supplement. Also, in paragraph 1, ''Definitions,'' a provision is included for the compliance supplement to designate clusters of Federal programs which would be treated as one program.

In paragraph 11, ''Auditor Selection,'' OMB is considering adding a restriction on auditor selection whereby an auditor who also prepares the indirect cost proposal, cost allocation plan, or the disclosure statement required by OMB Circular A–21, ''Cost Principles for Educational Institutions,'' or the Cost Accounting Standards Board, as appropriate, may not be selected when the indirect costs charged are greater than five percent of expenditures of any one Type A program, as defined in Appendix 1, or greater than five percent of expenditures for all Federal programs. Respondents are encouraged to comment whether the auditor restriction should be included in the revised Circular. Also, current Circular paragraph 11, ''Small and Minority Audit Firms,'' is deleted because these requirements are more fully covered in OMB Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.''

In paragraph 16, ''Report Submission,'' the due date is shortened for submitting reports required by this Circular from 13 months to 9 months. However, the provision for a cognizant or oversight agency to grant an extension is retained. Also, the report submission process was streamlined by providing for a certification form to be submitted in lieu of the full audit report when there are no audit findings, expanding the role of the central clearinghouse, and providing for the clearinghouse to pilot test electronic filing of reports. Under this expanded clearinghouse role, recipients will send all copies of reports to the clearinghouse which will subsequently distribute them to Federal agencies whose awards have audit findings.

Public Information Collection

The proposed revision includes a provision that will require the central clearinghouse designated by OMB to collect certain information about Federal awards and the audits of such awards. OMB is requesting comments on the proposed information collection described in paragraph 16, ''Report Submission.'' The final collection requirement will be submitted to OMB for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

John B. Arthur,

Associate Director for Administration.

Circular No. A–133—Revised

To the Heads of Executive Departments and Establishments

Subject: Audits of Non-Profit Organizations Receiving Federal Awards

1. *Purpose.* This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-profit organizations receiving Federal awards.

2. *Authority.* Circular A–133 is issued under the authority of sections 503 and 1111 of title 31, United States Code, and Executive Orders 8248 and 11541.

3. *Supersession.* This Circular supersedes the prior Circular A–133, issued March 8, 1990. For effective dates, see paragraph 10.

4. *Policy.* Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-profit organizations, whether they are recipients receiving awards directly from Federal awarding agencies, or are subrecipients receiving awards from a pass-thru entity (a recipient or another subrecipient). Therefore, whereas this Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments (which are covered by OMB Circular A–128, ''Audits of State and Local Governments''), this Circular does apply to awards that State and local governments make to non-profit organizations covered by this Circular.

This Circular does not apply to non-U.S. based entities receiving Federal awards either directly as a recipient or indirectly as a subrecipient.

5. *Definitions.* Definitions of key terms used in this Circular are contained in paragraph 1 in the Attachment.

6. *Required Action.* The specific requirements and responsibilities of Federal agencies and non-profit organizations are set forth in the Attachment and Appendices to this Circular. Federal agencies making awards to non-profit organizations, either directly or indirectly, shall adopt the language in the Circular in codified regulations, unless different provisions are required by Federal statute or are approved by OMB.

7. *OMB Responsibilities.* OMB will review agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation.

8. *Information Contact.* Further information concerning Circular A–133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993. Individual copies of this Circular may be obtained by contacting the Executive Office of the President, Publications Office, telephone (202) 395–7332.

9. *Termination Review Date.* This Circular will have a policy review three years from the date of issuance.

10. *Effective Dates.* (a) The standards set forth in this Circular that apply directly to Federal agencies will be effective 30 days after publication of the final revision in the **Federal Register**.

(b) The standards set forth in this Circular that Federal agencies are to apply to non-profit organizations will be adopted by Federal agencies in codified regulations within six months after publication of the final revision in the **Federal Register**, so that they will apply to audits of non-profit organizations for fiscal years that begin on or after January 1, 1996.

(c) In the interim period, until the standards in this Circular are adopted and become applicable, the audit

provisions of Circular A–133 issued March 8, 1990, shall continue in effect. However, if a non-profit organization receives awards of more than one Federal agency, and not all such agencies have adopted the standards in this Circular in a timely fashion, then Federal agencies should permit the non-profit organization to comply with the standards in this Circular for all of its awards.

Alice M. Rivlin,

Director.

Attachment
Appendix 1
Appendix 2
Appendix 3

OMB Circular A–133—Audits of Non-Profit Organizations Receiving Federal Awards

Attachment

Table of Contents

1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. *Auditee* means any non-profit organization receiving awards which must be audited under this Circular. This term includes both organizations which receive awards directly as a recipient or indirectly as a subrecipient.

b. *Auditor* means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term ''auditor'' does not include internal auditors of non-profit organizations because they do not meet the GAGAS independence standards to report as external auditors.

c. *Audit finding* means deficiencies which the auditor is required by paragraph 13.d(1) to include in the schedule of findings and questioned costs.

d. *Award* means Federal financial assistance and Federal cost-type contracts. It includes awards received directly from Federal awarding agencies or indirectly from recipients of Federal awards or subrecipients. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Audits of such vendors shall be covered by the terms and conditions of the contract.

e. *CFDA number* means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

f. *Cluster of programs* means Federal programs with different CFDA numbers that are defined as a cluster of programs in the compliance supplements because they are closely related programs and share common compliance requirements. A cluster of programs shall be considered as one program for determining major programs as described in Appendix 1 and whether a program-specific audit may be elected under paragraph 2.c.

g. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget (OMB) to carry out the responsibilities described in paragraph 6.a.

h. *Compliance supplements* refers to the Compliance Supplement for Audits of Institutions of Higher Learning and Other Non-Profit Organizations and the Compliance Supplement for Single Audits of State and Local Governments or such documents as OMB may issue to replace them. These documents are available from the Government Printing Office, telephone (202) 783–3238.

i. *Corrective action* means action taken by the auditee that: (1) Corrects identified deficiencies, (2) produces recommended improvements, or (3) demonstrates that audit findings are either invalid or do not warrant auditee action.

j. *Federal agency* has the same meaning as the term ''agency'' in Section 551(1) of title 5, United States Code.

k. *Federal awarding agency* means the Federal agency that provides an award directly to the recipient.

l. *Federal financial assistance* means assistance provided by a Federal agency to a recipient or by a pass-thru entity to a subrecipient to carry out a program. Such assistance may be in the form of: Grants, cooperative agreements, donated surplus property, food commodities, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, and other assistance. Such assistance does not include direct Federal cash assistance to individuals.

m. *Federal program* means:

(1) All Federal programs or awards under the same CFDA number. When no CFDA number is assigned, all awards from the same agency made for the same purpose may be combined. State governments may combine different awards to their subrecipients when the awards are closely related programs and share common compliance requirements. In this case, the State government may require the subrecipient to treat the combined awards as a single program.

A category of awards which is a group of awards in the categories of (a) research and development, (b) student financial aid, or (c) cluster of programs.

n. *GAGAS* means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

o. *Generally accepted accounting principles* has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants.

p. *Individual compliance requirements* refers to the types of compliance requirements as listed in the compliance supplements. Examples include cash management, Federal financial reporting, allowable costs/cost principles, types of services allowed or unallowed, eligibility, and matching.

q. *Internal control structure over Federal programs* means the policies and procedures established to provide reasonable assurance that the following objectives will be achieved:

(1) Transactions are executed in compliance with: (a) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program, and (b) any other laws and regulations that OMB has identified in the compliance supplements;

(2) Transactions are properly recorded and accounted for to: (a) Permit the preparation of reliable financial statements and Federal reports, (b) maintain accountability over assets, and (c) demonstrate compliance with laws, regulations, and other compliance requirements; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

r. *Loans* means Federal loans or loan guarantees received or administered by an auditee.

s. *Major program* means a Federal program determined by the auditor to be a major program in accordance with Appendix 1 or a program identified as

a major program by a Federal agency or pass-thru entity in accordance with paragraph 7.c.

t. *Management decision* means the evaluation by the Federal awarding agency or pass-thru entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

u. *Non-profit organization* means any corporation, trust, association, cooperative, or other organization which: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and, (3) uses its net proceeds to maintain, improve, and/or expand its operations. The term ''non-profit organization'' includes non-profit institutions of higher education and hospitals, except those that are audited as part of single audits in accordance with Circular A–128, ''Audits of State and Local Governments.''

v.*OMB* means the Executive Office of the President, Office of Management and Budget.

w. *Organization-wide audit* means an audit of a non-profit organization which includes both the organization-wide financial statements and the Federal awards as described in paragraph 12.

x. *Oversight agency* means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency are described in paragraph 6.b.

y. *Pass-thru entity* means a non-profit organization that provides a Federal award to a subrecipient.

z. *Program-specific audit* means an audit of one Federal program as provided for in paragraphs 2.c and 18.

aa. *Questioned cost* means a cost that is questioned by the auditor because of:

(1) An audit finding, which occurred or is likely to have occurred, from a violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) An audit finding where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) An audit finding where the costs incurred are unreasonable and do not reflect the actions a prudent person would take in the circumstances.

bb. *Recipient* means a non-profit organization receiving awards directly from a Federal awarding agency to carry out a Federal program.

cc. *Research and development* (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-profit organization. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

dd. *Student Financial Aid* (SFA) includes those programs of general student assistance in which a non-profit organization participates, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

ee. *Subrecipient* means the legal entity that receives an award from a pass-thru entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in paragraph 4.

ff. *Vendor* means a dealer, distributor, merchant, or other seller providing goods or services to an auditee that are required for the conduct of a Federal program. These goods or services may be for a non-profit organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in paragraph 4.

2. *Audit Requirements.*

a. *Audit Required.* Non-profit organizations that receive $300,000 or more in a year in awards shall have an organization-wide or program-specific audit conducted for that year in accordance with the provisions of this Circular.

b. *Organization-wide Audit.* Non-profit organizations that receive $300,000 or more in a year in awards shall have an organization-wide audit in accordance with paragraph 12 except when they elect to have a program-specific audit in accordance with paragraph c.

c. *Program-Specific Audit Election.* When a non-profit organization receives awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the non-profit organization, the non-profit organization may elect to have a program-specific audit conducted in accordance with paragraph 18. A program-specific audit may not be elected for R&D unless all awards are received from the same Federal agency, or the same Federal agency and the same pass-thru entity, and that Federal agency or pass-thru entity approves in advance a program-specific audit.

d. *Exemption When Awards Are Less Than $300,000.* Non-profit organizations that receive less than $300,000 a year in awards are exempt from Federal audit requirements for that year except as noted in paragraphs e and 7.a, but records must be available for review or audit by appropriate officials of the Federal awarding agency, pass-thru entity, and/or General Accounting Office (GAO).

e. *Special Provision for Certain Small Subrecipients.* When a Federal program is structured such that substantial service delivery and expenditure of Federal funds occur at subrecipients which receive awards of less than the $300,000 threshold for audit, the Federal agency, with the approval of OMB, may require pass-thru entities to arrange for audits of such subrecipients that would otherwise be exempt from audit under paragraph d. Such audits may be of lesser scope than audits required by this Circular.

3. *Basis for Determining Awards Received.*

a. *Determining Awards Received.* The determination of when an award is received should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-profit organization to comply with laws, regulations, and the provisions of contracts or grant agreements such as: Expenditure/expense transactions associated with grants, cost-type contracts, cooperative agreements, and direct appropriations; the use of loan proceeds under loan programs; the receipt of property; the receipt of surplus property; the distribution or consumption of food

commodities; the disbursement of amounts entitling the non-profit organization to an interest subsidy; and, the period when insurance is in force.

b. *Loans and Loan Guarantees (Loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of awards received under loan programs, except as noted in paragraphs c and d:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy or administrative costs allowance received.

c. *Loans and Loan Guarantees (Loans) at Institutions of Higher Education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered awards received in that year. The balance of loans for previous years is not included as awards received because the lender accounts for the prior balances.

d. *Prior Loans and Loan Guarantees (Loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered awards under this Circular when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

e. *Free Rent.* Free rent received by itself is not considered an award under this Circular. However, free rent received as part of an award to carry out a Federal program shall be considered an award and subject to audit under this Circular.

f. *Valuing Non-cash Assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

g. *Medicare.* Medicare payments to a non-profit organization for providing patient care services to Medicare eligible individuals are not considered awards under this Circular.

h. *Medicaid.* Medicaid payments to a non-profit organization for providing patient care services to Medicaid eligible individuals are not considered awards under this Circular unless a State requires the funds to be treated as awards because reimbursement is on a cost-type basis.

4. *Subrecipient and Vendor Determination.*

a. *General.* An auditee may be a recipient, a subrecipient, and a vendor. The awards received as a recipient or a subrecipient would be subject to audit under this Circular. The payments received for goods or services provided by a vendor would not be considered Federal awards. The guidance in paragraphs b and c should be considered in determining whether payments constitute an award to a subrecipient or a payment for goods and services to a vendor.

b. *Subrecipient.* Characteristics indicative of a subrecipient include:

(1) Determining who is eligible to receive what Federal financial assistance;

(2) Performance measured against meeting the objectives of the Federal program;

(3) Responsibility for programmatic decision making;

(4) Responsibility for applicable Federal program compliance requirements; and

(5) Use of funds to carry out a program of the subrecipient as compared to providing goods or services for a program of the pass-thru entity.

c. *Vendor.* Characteristics indicative of a vendor include:

(1) Providing goods and services within normal business operations;

(2) Providing similar goods or services to many different purchasers;

(3) Operating in a competitive environment;

(4) Having compliance requirements that do not pertain to the goods or services provided; and

(5) Providing goods or services that are ancillary to the operation of the Federal program.

d. *Use of Judgment in Making Determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

e. *For-profit Subrecipient.* Since this Circular does not apply to for-profit subrecipients, the pass-thru entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

f. *Compliance Responsibility for Vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for compliance or the vendor's records must be reviewed to determine compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

5. *Auditee Responsibilities.* The auditee shall:

a. Identify, in its accounts, all awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-thru entity.

b. Maintain an internal control structure over Federal programs that provides reasonable assurance that the auditee is managing awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material affect on each of its Federal programs.

c. Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

d. Prepare appropriate financial statements, including the schedule of Federal awards.

e. Ensure that the audits required by this Circular are properly performed and submitted when due.

f. Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with paragraphs 14.b and 14.c, respectively.

6. *Federal Agency and Pass-Thru Entity Responsibilities.*

a. *Cognizant Agency Responsibilities.* Recipients receiving more than $25 million a year in Federal awards shall have a cognizant agency. The assigned cognizant agency shall be the Federal awarding agency that provides the

predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency assignment and provides notice in the **Federal Register**. To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards received in the recipient's fiscal years ending in 1990, 1995, 2000, and every fifth year thereafter. A Federal awarding agency assigned cognizance may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency. Within 30 days after any reassignment, both the old and the new cognizant agency shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the nine month due date of the reporting package required by paragraph 16a. The cognizant agency may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations, when such reporting is not included in the reporting package described in paragraph 16.c.

(5) Advise the auditor and the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the auditor, the auditee, Federal awarding agencies, and the pass-thru entity of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with this Circular.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Help coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

b. *Oversight Agency Responsibilities.* An auditee not assigned a cognizant agency will be under the general oversight of the Federal agency providing it the predominant amount of direct funding as discussed in paragraph 1.x. The oversight agency:

(1) Shall provide technical advice and counsel to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency.

c. *Federal Awarding Agency Responsibilities.* The Federal awarding agency shall perform the following for the awards it makes:

(1) Identify awards made by informing each recipient of the CFDA title and number, award name and number, and award year. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(3) Provide technical advice and counsel to auditees and auditors as requested.

(4) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(5) Assign a person responsible to inform OMB annually of any updates needed to the compliance supplements.

d. *Pass-Thru Entity Responsibilities.* A pass-thru entity that receives a Federal award and passes all or part of it through to subrecipients shall perform the following for the awards it makes:

(1) Identify awards made by informing each subrecipient of CFDA title and number, award name and number, award year, and name of Federal agency. When some of this information is not available, the pass-thru entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-thru entity.

(3) Monitor the activities of subrecipients as necessary to ensure that awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that non-profit subrecipients receiving $300,000 or more in awards during the subrecipient's fiscal year have met the audit requirements of this Circular for that fiscal year, and that subrecipients subject to Circular A–128 have met the requirements of that Circular.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-thru entity's own records.

(7) Require each subrecipient to permit auditors to have access to the records and financial statements as necessary for the pass-thru entity to comply with this Circular.

7. *Relation to Other Audit Requirements.*

a. *Audit Under This Circular in Lieu of Other Audits.* An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this Circular neither limit the authority of Federal agencies, their inspectors general, or GAO to conduct or contract for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

b. *Federal Agency to Pay for Additional Audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits.

c. *Federal Agency Determination of Major Programs.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or contracting for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the applicable audit period. The auditee should promptly respond to such request by informing the Federal agency whether the program would otherwise

be audited as a major program and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. Since the Federal program audited as a result of this request would not otherwise have been audited as a major program, the expenditures of this Federal program shall not be included in the numerator of the calculation to determine whether the requirements of the 50 percent rule described in Appendix 1 were met. A pass-thru entity may use the provisions of this paragraph for a subrecipient.

8. *Frequency of Audit.* Audits required by this Circular shall be performed annually. However, a Federal agency or pass-thru entity may allow an auditee who elects a program-specific audit under paragraph 2.c to perform the audit every two years. Two-year audits must cover both years.

9. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have an audit conducted in accordance with this Circular, Federal agencies and pass-thru entities shall take appropriate sanctions such as:

a. Withholding a percentage of awards until the audit is completed satisfactorily;

b. Withholding or disallowing overhead costs;

c. Suspending awards until the audit is conducted; or

d. Terminating the award.

10. *Audit Costs.* Unless prohibited by law, the cost of audits made in accordance with the provisions of this Circular are allowable charges to awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, ''Cost Principles for Educational Institutions,'' Circular A–122, ''Cost Principles for Non-Profit Organizations,'' Federal Acquisition Regulations subpart 31, or other applicable cost principles or regulations.

11. *Auditor Selection.* In arranging for audit services, auditees shall follow the procurement standards prescribed by Circular A–110, ''Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.'' In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

12. *Scope of Audit.*

a. *General.* The audit shall be conducted in accordance with GAGAS.

b. *Financial Statements.* The auditor shall determine whether the financial statements of the auditee present fairly the auditee's financial position, results of operations, and, where appropriate, the cash flows in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of Federal awards is fairly presented in all material respects in relation to the auditee's financial statements taken as a whole.

c. *Internal Controls.*

(1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of the internal control structure over Federal programs sufficient to plan the audit to achieve a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (3), the auditor shall:

(a) Plan the testing of the internal control structure over major programs to achieve a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program.

(b) Perform testing of the internal control structure over major programs as planned in paragraph (a).

(3) When the internal control structure over major programs is likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraphs (2)(a) and (2)(b) are not required. However, the auditor shall report a reportable condition or a material weakness in accordance with paragraph 13.d, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of the ineffective internal control structure over major programs.

d. *Compliance.*

(1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance for each major program.

(3) The principal compliance requirements of the largest Federal programs are included in the compliance supplements.

(4) For Federal programs contained in the compliance supplements, an audit of the compliance requirements contained in the compliance supplements will meet the requirements of this Circular. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplements, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the elements of compliance (e.g., allowability of cost, types of services, eligibility) contained in the compliance supplements as guidance for identifying the individual compliance requirements to test, and determine the requirements governing the Federal program by reviewing the applicable laws, regulations, and the provisions of contracts or grant agreements. The auditor should consult with the applicable Federal agency to determine the availability of agency-prepared supplements or audit guides.

e. *Audit Follow-up.* The auditor shall follow-up on prior audit findings, review the summary schedule of prior audit findings prepared by the auditee in accordance with paragraph 14.b, and report, as an audit finding, when the results of the auditor's follow-up are different from those reported in the summary schedule of prior audit findings. The auditor shall perform audit follow-up regardless of whether a prior audit finding relates to a major program in the current year.

f. *Certification.* The auditor shall read the certification prepared by the auditee in accordance with paragraph 16.b and report as an audit finding when the information in the certification is materially inconsistent with the other parts of the reporting package.

13. *Financial Statements and Auditor's Reporting.*

a. *Financial Statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the organizational unit chosen to meet the requirements of this Circular.

b. *Schedule of Federal Awards.* The auditee shall also prepare a schedule of Federal awards for the period covered by the auditee's financial statements. While not required, it is appropriate for the auditee to provide information requested to make the schedule easier to use by Federal awarding agencies and pass-thru entities. At a minimum, the schedule shall:

(1) List total expenditures for each individual award and the CFDA number or other identifying number when the CFDA information is not available.

(2) Include notes that describe the significant accounting policies used in preparing the schedule.

(3) Identify major programs.

(4) List individual awards by Federal agency and major subdivision within a Federal agency. For awards received as a subrecipient, the name of the pass-thru entity and identifying number assigned by the pass-thru entity shall be included.

(5) List individual awards within a category of awards. However, when it is not practical to list each individual award for R&D, total expenditures shall be shown by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(6) Include, in either the schedule or a note to the schedule, the value of non-cash assistance received, insurance programs in effect during the year, and loans or loan guarantees outstanding at year end.

c. *Auditor's Reporting.* The auditor's report(s) shall include the following:

(1) An opinion as to whether the financial statements are fairly presented in conformity with generally accepted accounting principles or a disclaimer of opinion and an opinion as to whether the schedule of Federal awards is fairly presented in all material respects in relation to the financial statements taken as a whole.

(2) A report on the auditee's internal control structure related to the financial statements and major programs. This report shall describe the scope of testing of this internal control structure and the results of those tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (4).

(3) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements and major programs. This report shall include an opinion as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (4).

(4) A schedule of findings and questioned costs which includes all audit findings as defined in paragraph d.(1). Any internal control findings, compliance findings, and questioned costs which relate to the same issue should be presented as a single finding. Where practical, audit findings should be organized by Federal agency or pass-thru entity.

(5) A copy of any management letters issued by the auditor.

d. *Audit Findings.*

(1) The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(a) Reportable conditions in the internal control structure over major programs. The auditor's determination of a reportable condition for major programs is in relation to an individual compliance requirement for a major program. Auditors shall identify reportable conditions which are individually or cumulatively material weaknesses.

(b) Known fraud affecting an award. Fraud is a type of illegal act involving the obtaining of something of value through willful misrepresentation. This paragraph does not require the auditor to make an additional reporting when the auditor confirms the fraud has been reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(c) Material irregularities, illegal acts, and noncompliance with the provisions of contracts or grant agreements which auditors conclude, based on evidence obtained, have occurred or are likely to have occurred. The auditor's determination of whether an irregularity, an illegal act, or noncompliance with the provisions of contracts or grant agreements is material is in relation to an individual compliance requirement for a major program. An irregularity, an illegal act, or noncompliance with the provisions of contracts or grant agreements which could have a material effect on an audit objective identified in the compliance supplements shall also be considered as material.

(d) Known questioned costs which are greater than $10,000 for an individual compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance for each major program, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for an individual compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(e) Instances where the audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with paragraph 14.b is other than as reported by the auditee.

(f) Instances where the certification prepared by the auditee in accordance with paragraph 16.b is materially inconsistent with the reporting package described in paragraph 16.c.

(2) Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-thru entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(a) Federal program and specific award identification including the CFDA title and number, award number and year, name of Federal agency, and name of the pass-thru entity. When information, such as the CFDA title and number or award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(b) The criteria or specific requirement upon which the audit findings are based, including statutory, regulatory, or other citation.

(c) The condition found, including facts that indicate that the audit findings occurred or are likely to have occurred.

(d) Identification of questioned costs and how they were computed.

(e) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value, if appropriate.

(f) The possible asserted effect to provide sufficient information to Federal, State, or local officials to permit them to determine the effect and

cause in order to take prompt and proper corrective action.

(g) Recommendations to prevent future occurrences of the audit finding.

(h) Explanations of responsible officials of the auditee when there is disagreement with the audit findings.

(3) Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

14. *Audit Findings Follow-up.*

a. *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under paragraph 13.d(3). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

b. *Summary Schedule of Prior Audit Findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule shall also include audit findings in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (1) or no longer valid in accordance with paragraph (4).

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-thru entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule.

c. *Corrective Action Plan.* At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the names of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

15. *Management Decision.*

a. *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-thru entity may request additional information or documentation from the auditee, including a request that the documentation be audited, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

b. *Federal Agency.* As provided in paragraph 6.a.(7), the cognizant agency shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in paragraph 6.c.(4), a Federal awarding agency is responsible for issuing a management decision for findings that relate to awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

c. *Pass-Thru Entity.* As provided in paragraph 6.d.(5), the pass-thru entity shall be responsible for making the management decision for audit findings that relate to awards it makes to subrecipients.

d. *Time Requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should proceed as rapidly as possible.

e. *Reference Numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with paragraph 13.d.(3).

16. *Report Submission.*

a. *General.* Within nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency, the reporting package described in paragraph c shall be submitted in accordance with this Circular. Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

b. *Certification.* The auditee shall complete a certification form which states whether the audit was completed in accordance with this Circular and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be available from the central clearinghouse designated by OMB. The auditee's chief executive officer or chief financial officer shall sign a statement that the information on the form is accurate and complete.

Certificate of Audit

This is to certify that, to the best of my knowledge and belief, the (specify name of non-profit organization) has: (1) Engaged an auditor to perform an audit in accordance with the provisions of OMB Circular A–133 for the (specify number) months ended (specify date); (2) the auditor has completed such audit and presented a signed audit report which states that the audit was conducted in accordance with the provisions of the Circular; and, (3) the information on the attached form accurately and completely reflects the results of this audit, as presented in the auditor's report. I declare that the foregoing is true and correct.

Attachment

Information Accompanying Certificate of Audit

The following data elements will be included in a machine-readable form to accompany the Certificate of Audit:

(1) Catalog of Federal Domestic Assistance (CFDA) number for each covered Federal program

(2) name of each covered Federal program

(3) amount of expenditures for the current fiscal year associated with each covered Federal program

(4) whether or not there are audit findings in the current audit report related to the following:

(a) Amount of questioned costs
(b) Types of services allowed or unallowed
(c) Matching or cost sharing
(d) Maintenance of level of effort
(e) Earmarking
(f) Special reporting requirements
(g) Special tests and provisions
(h) Administrative requirements
(i) Cash management
(j) Federal financial reporting
(k) Program income
(l) Real property management
(m) Equipment management
(n) Procurement
(o) Subrecipient monitoring
(p) Uniform Relocation Assistance and Real Property Acquisition Policies Act

(q) Allowable costs/cost principles
(r) Davis-Bacon Act.

(5) Whether or not there is a summary schedule of prior audit findings

(6) If applicable, the CFDA number(s) for prior audit finding(s) reflected in the summary schedule of prior audit findings

(7) Non-Profit Organization Name:

_____

Employer Identification Number:

_____

Name and Title of Responsible Official:

_____

Telephone:

_____

Signature:

_____

Date of Execution:

_____

(8) Auditor Name:

_____

Name and Title of Contact Person:

_____

Auditor Address:

_____

Auditor Telephone:

_____

c. *Reporting Package.* The reporting package shall include the following:

(1) Certification discussed in paragraph b.

(2) Financial statements and schedule of Federal awards discussed in paragraphs 13.a and 13.b.

(3) Auditor's reporting discussed in paragraph 13.c.

(4) Summary schedule of prior audit findings discussed in paragraph 14.b.

(5) Corrective action plan discussed in paragraph 14.c.

d. *Submission to Clearinghouse.* All auditees shall submit to the central clearinghouse designated by OMB one copy of the:

(1) Certification discussed in paragraph b, and

(2) Reporting package described in paragraph c for each Federal awarding agency that provided direct awards when the schedule of findings and questioned costs disclosed audit findings for those direct awards or the summary schedule of prior audit findings reported the status of any audit findings for those direct awards.

e. *Additional Submission by Subrecipients.* Subrecipients shall submit to each pass-thru entity one copy of the:

(1) Certification discussed in paragraph b, and

(2) Reporting package described in paragraph c for each pass-thru entity when either the schedule of findings and questioned costs disclosed audit findings for awards that the pass-thru entity provided or the summary schedule of prior audit findings reported the status of any audit findings for awards that the pass-thru entity provided.

f. *Requests for Report Copies.* In response to requests by the Federal agency or pass-thru entity, auditees shall submit the appropriate copies of the reporting package described in paragraph c.

g. *Report Retention Requirements.* Auditees shall keep one copy of the reporting package described in paragraph c on file for three years from the date of submission to the central clearinghouse. Pass-thru entities shall keep subrecipients' submissions on file for three years from date of receipt.

h. *Clearinghouse Responsibilities.* The central clearinghouse designated by OMB shall distribute the reporting package received in accordance with paragraph d.(2) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required certifications and reporting packages.

i. *Clearinghouse address.* The address of the central clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132. If the designated central clearinghouse or its address should change, OMB will publish this information in the **Federal Register**.

j. *Electronic Filing.* Nothing in this Circular shall preclude electronic submissions to the central clearinghouse in such manner as may be approved by OMB. With OMB approval, the central clearinghouse may pilot test methods of electronic submissions.

17. *Audit Working Papers and Reports.* The auditor shall retain working papers and reports for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency, oversight agency, or pass-thru entity to extend the retention period. When auditors are aware that the Federal awarding agency, pass-thru entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding prior to destruction of the working papers and reports. Audit working papers shall be made available upon request to the cognizant or oversight agency or their designee, the Office of Inspector General of a Federal agency providing direct or indirect funding, or GAO at the completion of the audit.

18. *Program-Specific Audit.*

a. *Program Audit Guide Available.* In many cases a program-specific audit guide will be available to provide specific guidance to the auditor on internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

b. *Program Audit Guide Not Available.*

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program audited as they would have for a major program audited under the requirements of this Circular.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of the Federal program expenditures and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of paragraph 14.b, and a corrective action plan consistent with the requirements of paragraph 14.c.

(3) The auditor shall: (a) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS; (b) obtain an understanding of the internal control structure policies and procedures and perform tests of the internal control structure for the Federal program consistent with the guidance in paragraph 12.c for a major program; (c) perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the guidance in paragraph 12.d for a major program; (d) follow up on prior audit findings, review the auditee's summary schedule of prior audit findings, and report, as an audit finding, when the results of the auditor's follow-up are different from those reported by the auditee consistent with the requirements of paragraph 12.e; and, (e) read the certification prepared by the auditee consistent with the requirements of paragraph 12.f.

(4) The auditor shall: (a) Render an opinion as to whether the financial statement(s) of the Federal program is fairly presented in accordance with the stated accounting policies; (b) issue a report on the internal control structure

related to the Federal program, which shall describe the scope of testing of that internal control structure and the results of those tests; (c) issue a report on compliance with laws and regulations which includes an opinion as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and, (d) issue a schedule of findings and questioned costs which includes audit findings for the Federal program as described in paragraph 13.d.

c. *Reporting for Program-Specific Audits.* Within nine months after the end of the audit period, unless a longer period is approved in advance by the Federal agency providing the funding, the auditee shall submit to the central clearinghouse designated by OMB a certification prepared in accordance with the requirements of paragraph 16.b. When a program-specific audit guide is available, the financial statement(s) and the audit report shall be submitted in accordance with that guide. When a program-specific audit guide is not available and the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit to the Federal awarding agency or pass-thru entity one copy of the financial statement(s), summary status of prior audit findings, corrective action plan, and the auditor's reporting described in paragraph b.(4). Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

d. *Other Paragraphs of This Circular May Apply.* The provisions of paragraphs 1 through 11, 15, 17 and other referenced provisions of this Attachment apply to program-specific audits unless contrary to a program-specific audit guide or program laws and regulations.

Appendix 1—Major Program Determination

The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: (a) Current and prior audit experience, (b) oversight by Federal agencies and pass-thru entities, and (c) the inherent risk of the Federal program. The following process shall be followed:

Step 1—The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal expenditures exceeding three percent of total Federal expenditures or $300,000, whichever is greater. The remaining Federal programs shall be labeled Type B programs.

The inclusion of large non-cash assistance, insurance programs, or loans and loan guarantees (loans), should not result in the exclusion of other programs as Type A programs. When a Federal program providing non-cash assistance, insurance, or loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

Step 2—The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods, and, in the most recent period audited, it shall have had no audit findings from reportable conditions, irregularities, illegal acts, or noncompliance with the provisions of contracts or grant agreements as described in paragraphs 13.d.(1)(a) and 13.d.(1)(c) of the Attachment. The auditor shall consider the criteria in D, E, F, G, and H of Appendix 2 and whether any changes in personnel or systems affecting a Type A program have significantly increased risk, and apply professional judgment in determining whether a Type A program is low-risk.

Step 3—The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in Appendix 2. Except for known reportable conditions in internal controls or compliance problems as discussed in criteria A, B, and D of Appendix 2, a single criteria in Appendix 2 would seldom cause a Type B program to be considered high-risk.

An audit under this Circular is not expected to test small Federal programs. Therefore, programs with expenditures of less than $100,000 would not be considered high-risk unless it is necessary to audit a program with expenditures of less than $100,000 as a major program to meet the 50 percent rule discussed below.

Step 4—All Type A programs shall be audited as major programs, except the auditor may exclude any Type A programs identified as low-risk under step 2. All Type B programs identified as high-risk under step 3 shall be audited as major programs.

50 Percent

Rule—The audit of Federal programs shall cover at least 50 percent of total Federal expenditures unless the auditee meets the criteria in Appendix 3 for a low-risk auditee, in which case the coverage shall be at least 25 percent of total Federal expenditures.

Documentation of Risk

The auditor shall document in the working papers the risk analysis process used in determining major programs.

Auditor's Judgment

When the major program determination has been performed and documented in accordance with this Circular, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-thru entities shall only be for clearly improper use of the guidance in this Circular. However, Federal agencies and pass-thru entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

Deviation from Use of Risk Criteria

For first year audits, the auditor may elect to determine major programs as all Type A programs plus any higher risk Type B programs as necessary to cover at least 50 percent of total Federal expenditures. Under this option, the auditor would not be required to perform the procedures discussed in steps 2, 3, and 4 of this Appendix.

A first-year audit is the first year the entity is audited under this Circular or the first year of a change of auditors or a bona fide procurement process which could result in a change of auditors.

To ensure that a frequent change of auditors would not preclude audit of high risk Type B programs, this election for first year audits may not be used by a non-profit organization more than once in every three years.

Appendix 2—Criteria for Risk

The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria such as the following to identify risk in Federal programs:

Current and Prior Audit Experience

A. Weaknesses in the internal control structure over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and

the competence and experience of personnel who process transactions affecting Federal programs.

1. A Federal program administered under multiple internal control structures may have a higher risk. When identifying risk in a large organization-wide audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the organization.

2. When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

3. The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

B. Prior audit findings would indicate higher risk, particularly when the audit findings could have a significant impact on a Federal program or have not been corrected.

C. Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

Oversight Exercised by Federal Agencies and Pass-Thru Entities

D. Oversight exercised by Federal agencies or pass-thru entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

E. Risk would be higher for Federal programs identified by the Office of Management and Budget (OMB) as high-risk at the auditee level. OMB plans to provide this identification in its compliance supplements or by issuing an annual list of high-risk programs.

Inherent Risk of the Federal Program

F. The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

G. The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs laws, regulations, or the provisions of contracts or grant agreements may increase risk.

H. The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years, an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

I. Type B programs with larger expenditures would be of higher risk than programs with substantially smaller expenditures.

As part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-thru entity.

Appendix 3—Criteria for a Low-Risk Auditee

An auditee which meets all of the following conditions for the preceding two years shall qualify as a low-risk auditee under the 50 percent rule described in Appendix 1, unless the current year audit does not meet the conditions described in paragraph 3 below:

1. The audits were performed in accordance with the provisions of this Circular.

2. The auditor's opinions on the financial statements and the schedule of Federal awards were unqualified. However, the cognizant or oversight agency may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

3. There were no deficiencies in internal controls which were identified as material weaknesses under the requirements of generally accepted government auditing standards (GAGAS). However, the cognizant or oversight agency may judge that the material weaknesses do not affect the management of Federal awards and provide a waiver.

4. For any one Type A program, as defined in step 1 of Appendix 1, there were no audit findings as described in paragraph of the Attachment from:

a. Internal control deficiencies which were identified as material weaknesses.

b. Irregularities, illegal acts, or noncompliance with the provisions of contracts or grant agreements which either individually or cumulatively have a material effect on the Type A program.

c. Known or likely questioned costs that exceed five percent of the total expenditures for a Type A program during the year.

[FR Doc. 95–6662 Filed 3–16–95; 8:45 am]

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Friday
March 17, 1995

Part IX

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Refrigerant Recycling; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5174–5]

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Through this action EPA is amending the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h), which are currently scheduled to expire on May 15, 1995, only until March 18, 1996 or until EPA can complete rulemaking to adopt new refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is extending the requirements in response to requests from the air-conditioning and refrigeration industry in order to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants, which could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

In the proposed rules section of today's **Federal Register**, EPA is proposing to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h) and soliciting public comment on this extension. If adverse comments are received on this direct final rule, EPA will withdraw the direct final rule and address the comments received in a subsequent final rule on the related proposed rule. No additional opportunity for public comment on the extension will be provided.

DATES: This final action will become effective on May 16, 1995 unless EPA is notified by April 17, 1995 that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this direct final rule, then timely notice will be published in the **Federal Register**.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Deborah Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (Docket # A–92–01 VIII.F.) (202) 233–9149.

FOR FURTHER INFORMATION CONTACT: Section 608 Recycling Program Manager, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Overview

Paragraphs 82.154 (g) and (h) of 40 CFR Part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on May 15, 1995. EPA is currently in the process of adopting new, less restrictive, refrigerant purity requirements based on industry guidelines, but will be unable to complete the rulemaking prior to the expiration of the existing standards. A lapse in the standards could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn causes increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants (including crops and aquatic organisms), and increased formation of ground-level ozone. To avoid these results, EPA is acting on requests from the air-conditioning and refrigeration industry to extend the effectiveness of the current refrigerant purity requirements, only until EPA can complete rulemaking to adopt the new requirements.

II. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would probably be required to address some issues that had been raised during the comment period on the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI 700 Standard of purity by a certified reclaimer (§ 82.154 (g) and (h) referencing standard in §§ 82.152(r) and 82.164). As discussed in the final rule, this requirement was intended to protect the purity of used refrigerant in order to prevent damage to air-conditioning and refrigeration equipment from use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could in turn lead to release of refrigerant that was presumed to be contaminated (and therefore harmful to equipment), depleting stratospheric ozone, decreasing the limited supply of refrigerants, and forcing the premature retirement or retrofit of CFC or HCFC equipment (58 FR 28678).

Although the reclamation requirements at § 82.154 (g) and (h) would clearly protect equipment, EPA believed that a less stringent but still effective requirement could be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced

by the same contractor. However, the only existing refrigerant purity standard at the time EPA promulgated the rule was ARI 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers.

In order to encourage industry to explore the possibility of developing less stringent but still effective standards and technologies for purifying refrigerant, EPA adopted a commenter's suggestion that the Agency establish an expiration date, or ''sunset,'' for the reclamation requirement. EPA accordingly made the reclamation requirements at § 82.154 (g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG–2): Handling and Reuse of Refrigerants in the United States.* This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. EPA believes that these requirements would protect air-conditioning and refrigeration equipment while permitting technicians, contractors, and equipment owners more flexibility than the current requirements, and EPA is pursuing rulemaking to adopt the IRG–2 requirements as soon as possible. However, EPA does not believe that it will have an opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule between now and May 15, 1995, when the current reclamation requirements will expire.

Representatives of the air-conditioning and refrigeration industry have expressed concern that such a lapse in refrigerant purity requirements would result in a number of problems, including sloppy handling of refrigerant and dumping of contaminated refrigerant on the market. These problems would in turn result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. However, if this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than properly disposed of.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and ''recyclers'' are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; in others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. (In fact, in the latter situation the refrigerant is worse than worthless, because the owner of the refrigerant must actually pay to have the refrigerant properly disposed of.) In either situation, such dumping would lead to widespread equipment damage. This concern is exacerbated by the date on which the current reclamation requirements are scheduled to expire: May 15 falls at the beginning of the summer, when there is heavy demand for refrigerant.

III. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard and anticipates publishing a proposal by mid to late summer of this year.

IV. Effective Date

This final action will become effective on May 16, 1995 unless EPA is notified by April 17, 1995 that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this direct final rule, then timely notice will be published in the **Federal Register**.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this 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 lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, 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.

It has been determined by OMB and EPA that this amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that this amendment will have negligible impact on the regulated community because it simply extends an existing requirement. This requirement itself is expected to result in significant private savings due to avoided damage to air-conditioning and refrigeration equipment and

preservation of a stock of pure refrigerant to continue servicing equipment. An examination of the impacts of the section 608 rule as a whole on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

VI. Judicial Review

Because these regulations are nationally applicable under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Interstate commerce, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: March 14, 1995.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) Effective May 16, 1995 until March 18, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152(r);

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective May 16, 1995 until March 18, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * *

[FR Doc. 95–6750 Filed 3–16–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5174–6]

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements at § 82.154(g) and (h), which are currently scheduled to expire on May 15, 1995, only until one year after publication of any final rule based on this proposal or until EPA can complete rulemaking to adopt new refrigerant purity requirements based on industry guidelines, whichever comes first. In the final rules section of this **Federal Register**, EPA is promulgating this amendment as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the amendment is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time. EPA has found that there is good cause for denying the opportunity for a public hearing pursuant to CAA section 307(d)(1) and 5 U.S.C. section 553(b)(3)(B).

DATES: Comments on this proposed rule must be received on or before April 17, 1995.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–92–01 VIII.F, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. All supporting materials are contained in Docket A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Section 608 Recycling Program Manager, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION:

I. Public Participation

EPA is providing an opportunity for interested parties to submit written comments on this proposal. However, EPA is not providing an opportunity for a public hearing in addition to the opportunity to submit written comments. This is necessary to ensure that EPA has sufficient time to take final action on the proposed extension of the reclamation requirements before those requirements expire on May 15, 1995. Even without an opportunity for a public hearing, the public comment period will close in mid-April at the earliest. Thus, a public hearing would be impracticable if EPA is to be able to act on the proposed extension of the reclamation requirements before their expiration.

Moreover, it would be contrary to the public interest to effectively eliminate EPA's option to extend the reclamation requirements before expiration by providing an opportunity for a public hearing. As discussed in the direct final rule published in the final rules section of this **Federal Register**, a lapse in the reclamation requirements could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages. Release of refrigerants has been found to deplete stratospheric ozone. Refrigerant shortages would result in economic harms from refrigerant price increases and from the premature retrofit of CFC and HCFC equipment.

Moreover, the lack of opportunity for a public hearing should place little burden on the public. First, commenters still have the opportunity to submit written comments on this proposal. EPA believes that such an opportunity to comment will be fully sufficient here to comply with the interest in ensuring public participation in agency actions, particularly as EPA expects very few, if any, adverse comments. Indeed, an important impetus for proposing this rule has been a request by significant portions of the affected industry that EPA extend the current standard. Second, if promulgated, the proposed rule would simply extend existing requirements, so EPA does not expect to receive significant new information regarding the costs and benefits of these requirements during the comment period. Third, the extension is for a limited time period, one year. Well before that time, EPA expects to propose a substitute standard, with full opportunity for written comment and a public hearing. Fourth, if the proposed rule is promulgated, continued compliance with the existing standard should impose no new burden on affected parties.

Providing for a public hearing here would be impracticable and contrary to the public interest, as EPA is providing sufficient opportunity for submission of written comment, the burden imposed on affected parties is minimal, and EPA expects it will need to extend the reclamation requirements before the May 15, 1995, expiration date. Thus, the Agency finds good cause for denying the opportunity for a public hearing pursuant to CAA § 307(d)(1) and 5 U.S.C. section 553(b)(3)(B).

If adverse comments are received on the direct final rule, EPA is proposing to make the final rule that responds to those comments effective upon publication. This expedited effective date is necessary to extend the reclamation requirements before those requirements expire on May 15, 1995. Providing for a 30 day delay in effectiveness after publication would be impracticable and contrary to the public interest. As discussed above, EPA would not have sufficient time to extend the reclamation requirements prior to their expiration if EPA must allow for an additional 30 days after publication. Also, for the reasons discussed above, EPA believes that a lapse of those requirements would be contrary to the public interest. Finally, because the proposed rule merely extends the existing requirements, making the rule effective immediately upon publication places little burden on the affected parties. Given the lack of burden upon affected parties and the need to extend the reclamation requirements prior to their expiration, the Agency proposes to find good cause for expediting the effective date of the rule, pursuant to 5 U.S.C. section 553(d)(3).

II. Additional Information

For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Chemicals, Reporting and recordkeeping requirements.

Dated: March 14, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–6751 Filed 3–16–95; 8:45 am]

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Federal Register

Friday
March 17, 1995

Part X

The President

Executive Orders 12957—Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources

Federal Register
Vol. 60, No. 52
Friday, March 17, 1995

Presidential Documents

Title 3—

The President

Executive Order 12957 of March 15, 1995

Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order: (a) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract;

(b) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract for the financing of the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract; and

(c) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For the purposes of this order: (a) The term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, or other organization;

(c) The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) The term ''Iran'' means the land territory claimed by Iran and any other area over which Iran claims sovereignty, sovereign rights or jurisdiction, including the territorial sea, exclusive economic zone, and continental shelf claimed by Iran.

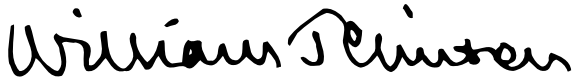
Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States

Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order is effective at 12:01 a.m., eastern standard time, on March 16, 1995.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**



THE WHITE HOUSE,
March 15, 1995.

[FR Doc. 95–6849
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