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FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

12 CFR Part 336

RINs 3064–AA08, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing uniform standards of ethical conduct for employees of the Corporation to supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The final rule will become effective 30 days after the date of publication, and will establish: prohibitions on borrowing and extensions of credit; prohibitions on the ownership of certain financial interests; prohibitions on the purchase of property controlled by the Corporation or the Resolution Trust Corporation (RTC); limitations on official dealings with former employers and clients; disqualification requirements relating to employment of family members outside the Corporation; and limitations on outside employment activities.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898–7272; Richard M. Handy, Ethics Program Manager, (202) 898–7271; or Paul A. Jeddeloh, Senior Program Attorney, (202) 898–7161, in the Office of the Executive Secretary of the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1994, with the concurrence of OGE, the Corporation published for comment a proposed rule to establish supplemental standards of ethical conduct for employees of the FDIC (59 FR 35480–35487). The proposed rule was issued to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions for certain existing agency standards of conduct at 59 FR 4779–4780 and 60 FR 6390–6391, which grace period expires on January 3, 1996). The Executive Branch-wide Standards, now codified at 5 CFR part 2635, establish uniform standards of ethical conduct for executive branch employees. The proposed rule was issued pursuant to 5 CFR 2635.105 and the Resolution Trust Corporation Completion Act (P.L. 103–204) which authorize the Corporation to publish agency-specific supplemental regulations necessary to implement its ethics program. The Corporation, with the concurrence of OGE, determined that the supplemental regulations contained in the proposed rule were necessary successfully to continue the Corporation's ethics program in light of the Corporation's unique programs and operations.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. The Corporation received nine comment letters and, after careful consideration of each comment, has made appropriate modifications to the rule. Technical changes were made to accommodate the formation, subsequent to the publication of the proposed rule, of a new Division within the Corporation—the Division of Compliance and Consumer Affairs. At the request of the Board of Directors, a provision was added to the credit restrictions in order to retain the current restrictions for certain categories of employees of the Division of Depositor and Asset Services. The Corporation, with the concurrence of OGE, is now publishing as a final rule the Supplemental Standards of Conduct for Employees of the Federal Deposit Insurance Corporation, to be codified in new part 3201 of 5 CFR chapter XXII.

II. Summary of the Comments

The Corporation received comments from eight employees and one financial institution trade association. The comments from employees contained both requests for substantive changes and for guidance on the application of the rule in general or in specific sections. The comments received from the trade association expressed support for certain specific sections of the rule and suggested substantive changes.

III. Analysis of the Comments

Section 3201.101 General

One commenter requested guidance on the meaning of the term *employee* as defined in § 3201.101(d) as it would be applied to employees of contractors doing business with the Corporation. As required by section 19 of the Resolution Trust Corporation Completion Act and implemented in the final rule, the term *employee* includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation. All employees of contractors who fall under such definition would be subject to the Executive Branch-wide Standards and specified provisions of part 3201.

Section 3201.102 Extensions of Credit From FDIC-Insured Depository Institutions

One commenter, in reference to the preamble discussion of § 3201.102(c) in the proposed rule, asked whether the prohibition on examiners obtaining extensions of credit from institutions that they have examined carried a time limitation and expressed concern that the restriction, if it did not carry a time limitation, was too severe. The prohibition referred to by the commenter is found at 18 U.S.C. 213, a criminal statute, and was referenced in the preamble to assist the reader in understanding part of the basis for the imposition of the restrictions found at § 3201.102(c). 18 U.S.C. 213 does not carry a time limitation.

One commenter suggested that, for purposes of § 3201.102(c), an examiner might not be aware of the identity of the person or company from whom or which he or she intended to obtain

credit. The Board believes it is reasonable to expect an employee to make inquiries in order to ascertain the identity of a lender prior to engaging in a credit transaction. Similarly, the same commenter suggested that, for purposes of § 3201.102(c)(ii), the headquarters of a credit card issuer might not be readily apparent. The Board believes it is also reasonable to expect employees of the Division of Supervision and the Division of Compliance and Consumer Affairs to make inquiries to ascertain the location of the headquarters of a credit card issuer.

The Corporation did not adopt the suggestion of one employee, in reference to § 3201.102(d) and § 3201.103(c), to restate in part 3201 the text of certain definitions found in the Executive Branch-wide Standards and referred to in such part. Since part 3201 is a supplement to the Executive Branch-wide Standards, it is appropriate to make references to the text of the primary regulation.

The Corporation did not adopt the suggestions of two employees to narrow or remove the provisions of the regulation found at §§ 3201.102(a), as well as at 3201.103(a) and 3201.104(a), under which the interests of an employee's spouse or minor child are to be considered as if they were the interests of the employee. The Board determined that the application of the prohibitions in §§ 3201.102 to 3201.104 to the interests of a spouse or minor child of an employee is necessary to avoid the appearance of a lack of impartiality by the employee in his or her official dealings and to avoid a significant number of recusals which would hinder program operations. The application of these provisions to the interests of a spouse or minor child is consistent with such application in § 2635.403(a) of the Executive Branch-wide Standards.

The trade association, commenting on the proposed rule, expressed support for the provisions of § 3201.102 but expressed concern that an unreasonable recordkeeping burden might result from the two-year prohibition on acceptance of credit found at § 3201.102(d). The Board does not believe that compliance with the provision would create an unreasonable recordkeeping burden since employees have the responsibility to keep track of matters in which they have participated and since such requirement imposes no greater burden on an employee than is imposed by other ethics provisions, such as the statutory post-employment restrictions found at 18 U.S.C. 207 (a)(1) and (a)(2).

Section 3201.103 Prohibitions on Ownership of Securities of FDIC-Insured Depository Institutions

One employee and the trade association commented that the exception dealing with the ownership of interests in investment funds set forth at § 3201.103(b)(5) was too restrictive since its practical application would prohibit ownership interests in investment funds which might not hold interests in FDIC-insured depository institutions. Based upon the comments, the reference to a fund ''concentrating its investments in the financial services sector'' was deleted and replaced with language which prohibits an employee from acquiring an interest in a fund which, at the time an employee acquires an interest, holds more than 30 percent of its investments in FDIC-insured depository institutions or FDIC-insured depository institution holding companies. Under the revised provision, an employee is required to verify the holdings of the investment fund at any time the employee acquires an interest in the fund, unless the acquisition results from the ordinary reinvestment of earnings the employee has accrued from ownership interests in the fund. The revised provision addresses the Corporation's concern over employees holding ownership interests in the institutions that it insures by prohibiting the acquisition of interests in banking sector funds and provides employees with broader investment opportunities than would have been provided by the proposed rule.

Section 3201.104 Restrictions Concerning the Purchase of Property Held by the Corporation or the RTC as Conservator, Receiver, or Liquidator of the Assets of an Insured Depository Institution, or by a Bridge Bank Organized by the Corporation

One commenter asked whether the term ''property'' as used in § 3201.104(a) includes furniture, fixtures, equipment, securities and other items. The term ''property'' is intended to include all of the items specified as well as other assets held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.

One employee suggested that the prohibition on employee purchases of property held by the FDIC or RTC be expanded to prohibit employees of FDIC contractors from purchasing such assets. No change was made to the provision since the application of the rule is limited to FDIC employees. Employees of contractors would only be covered by the rule when such contractor employees are considered employees of the FDIC as delineated in § 3201.101(d)(4).

Section 3201.105 Prohibitions on Dealings With Former Employers, Associates, and Clients

One employee suggested that the discretionary extension of the one-year disqualification on dealings with former employers, associates, and clients at § 3201.105(c) specify that the discretion to impose the extension would only be applicable after an individual becomes an employee of the Corporation. No change was made to accommodate this suggestion since the rule, as proposed, is only applicable to those who have become Corporation employees.

In response to the suggestion of the trade association that, in the case of an employee who was unemployed for the one-year period immediately preceding entry on duty with the Corporation, the prohibition on dealings with former employers be extended to include a one-year prohibition on dealings with the last employer of the employee regardless of when the employee was last employed, § 3201.105(c) was modified to provide the Corporation with discretion to extend the one-year period preceding an employee's entrance on duty with the Corporation, during which extended period employment will trigger disqualification from matters affecting that former employer. The interests of the Corporation in avoiding the appearance of a lack of impartiality by an employee in his or her official dealings is better served by extending the rule on a case-by-case basis as circumstances warrant.

Section 3201.106 Employment of Family Members Outside the Corporation

The Board did not adopt the suggestion of one employee to define separately the terms ''family'' and ''household.'' The term ''family'' is used only in the title of § 3201.106 with specific classifications of family members set forth in that section. The phrase ''member of the employee's household'' is generally understood, and is used without specific regulatory definition in the Executive Branch-wide Standards at § 2635.502. The same employee also commented that an undue burden would be created by requiring employees to report the employment of family members not residing with the employee by FDIC-insured depository institutions. Because the reporting requirement applies only to the employment of spouses, children, parents, and siblings, the Board does not

share the commenter's view that the requirement could be onerous and unreasonable. Moreover, the Corporation's prior regulation at 12 CFR 336.23, containing a substantially identical reporting requirement, appears to have been implemented without unduly burdening employees.

Section 3201.107 Outside Employment and Other Activities

The Corporation did not adopt the suggestions of one employee and the trade association to tailor the application of the prohibition on outside employment with FDIC-insured depository institutions to the various positions held by Corporation employees within the Corporation or to positions held by employees in FDIC-insured depository institutions. The Corporation's sensitive relationships with FDIC-insured depository institutions would invariably raise, at a minimum, the appearance of preferential dealings or treatment whenever an FDIC employee is provided compensation by such institution. In order to avoid an adverse public perception and recusals in the operation of the Corporation's programs, the Board determined that it was appropriate to prohibit employees from engaging in compensated outside employment with FDIC-insured depository institutions.

The Board did not adopt the suggestion of one commenter that the restriction at § 3201.107(b) on the use of real estate licenses by employees whose duties with the Corporation require involvement in matters related to real estate be eliminated for purposes of the purchase and sale of an employee's personal residence or the purchase and sale of real estate for the employee's personal investment portfolio. The rule, as proposed and now as being adopted in final, is intended to balance an employee's right to engage in outside activities against the interests of the Corporation in protecting against questions regarding the impartiality and objectivity of employees and the administration of the Corporation's programs. It would hinder the Corporation in meeting its missions if members of the public were to question whether Corporation employees are using their public positions or official contacts for private gain, including advancing their personal real estate careers. It is important to note that the restriction on the use of such licenses specifies that the prohibition applies only to those situations involving the production of income, thus targeting those situations most likely to raise questions by members of the public. The use of a real estate license for the purchase of a personal residence or vacation home would not ordinarily be restricted since such transaction normally does not result in the production of income.

The same commenter also suggested that § 3201.107(b) was vague and uncertain as written and that it should be re-written to provide detailed procedural rules and an appeals procedure. The Board did not share the view of the commenter. As written, the rule clearly prohibits the use of professional licenses by employees and sets forth a standard of review for requests for exceptions to the application of the prohibition.

IV. Other Changes

The Board of Directors, upon reconsideration of the existing FDIC standards set forth at 12 CFR part 336, requested that the existing restriction on extensions of credit for field employees of the Division of Depositor and Asset Services, formerly the Division of Liquidation, be retained in the final rule in order to eliminate the possibility that employees who participate in asset disposition activities will be able to obtain favored treatment from assisted or assuming entities located in their region of assignment. Therefore, a new § 3201.102(e) was added which continues to apply the existing standard as set forth at 12 CFR 336.16(b)(3) to field employees of the Division of Depositor and Asset Services. To accommodate the added provision, definitions for *assisted entity* and *assuming entity* were taken from part 336 and added at § 3201.101(d)(3) and § 3201.101(d)(4), respectively. The existing standard, as set forth in the final rule, provides that a covered employee in the Division of Depositor and Asset Services assigned to a service center or other field office is prohibited from obtaining credit from an assisted or assuming entity, except for credit extended through the use of a credit card under the same terms and conditions as are offered to the general public. An *assisted entity* is generally defined as an FDIC-insured depository institution which has received financial assistance from the FDIC in order to prevent its failure, any FDIC-insured depository institution resulting from a merger or consolidation with an institution that has received such assistance, and a holding company of an institution that has received assistance or has resulted from a merger or consolidation with such institution. An assisted entity retains its status as an assisted entity for such time as there is an ongoing financial relationship with the FDIC.

An *assuming entity* is generally defined as an FDIC-insured depository institution which has entered into a transaction to purchase some or all of the assets and some or all of the liabilities of a failed FDIC-insured depository institution, any holding company of such institution, any FDIC-insured depository institution resulting from such transaction and its wholly owned subsidiaries, and any branches or wholly owned subsidiaries of the purchaser or its holding company. An assuming entity retains its status as an assuming entity for a period of one year after the failure of the FDIC-insured depository institution.

V. Removal of FDIC Employee Responsibilities and Conduct Regulations and Related Modifications

On the effective date of the final rule, the Employee Responsibilities and Conduct regulation, 12 CFR part 336, will be amended to remove and reserve subparts A, B, C, E, and F, §§ 336.1–336.23 and §§ 336.29–336.37, and remove the appendix to part 336. Additionally, a new § 336.1 will be added to provide a cross-reference to the Corporation's supplemental ethical conduct regulation, to be codified at 5 CFR part 3201, the Corporation's supplemental financial disclosure regulation at 5 CFR part 3202, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635. 12 CFR part 336, subpart D, §§ 336.24 through 336.28, was removed and reserved by action of the Board of Directors of the Corporation dated November 24, 1992, 57 FR 39628.

VI. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Board of Directors has concluded that the final rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The Board of Directors has determined that this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget

pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

5 CFR Part 3201

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

12 CFR Part 336

Conflict of interests, Government employees.

Dated at Washington, D.C. this 11th day of April, 1995.

By Order of the Board of Directors.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

(SEAL)

Concurred in this 14th day of April, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics, is amending title 5, Chapter XXII, of the Code of Federal Regulations and title 12, Chapter III, of the Code of Federal Regulations as follows:

5 CFR CHAPTER XXII—FEDERAL DEPOSIT INSURANCE CORPORATION

1. A new part 3201 is added to 5 CFR chapter XXII to read as follows:

PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.
3201.101 General.
3201.102 Extensions of credit from FDIC-insured depository institutions.
3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.
3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.
3201.105 Prohibition on dealings with former employers, associates, and clients.
3201.106 Employment of family members outside the Corporation.
3201.107 Outside employment and other activities.
3201.108 Related statutory and regulatory authorities.
3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502, and 2635.803.

§ 3201.101 General.

(a) *Purpose.* The regulations in this part apply to employees of the Federal Deposit Insurance Corporation (Corporation) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Where specified, these regulations also apply to the Comptroller of the Currency and the Director of the Office of Thrift Supervision in connection with their activities as members of the Corporation's Board of Directors.

(b) *Corporation ethics officials.* The Executive Secretary of the Corporation shall act as the Corporation's Ethics Counselor and as its Designated Agency Ethics Official under 5 CFR part 2638. The Assistant Executive Secretary (Ethics) shall act as the Corporation's Alternate Ethics Counselor and as the Alternate Agency Ethics Official.

(1) The Ethics Counselor or Alternate Ethics Counselor may delegate authority to one or more employees to serve as Deputy Ethics Counselors.

(2) The delegation to a Deputy Ethics Counselor shall be in writing and cannot be redelegated.

(c) *Agency designees.* The Ethics Counselor and Alternate Ethics Counselor shall serve as the agency designees for purposes of making the determinations, granting the approvals, and taking other actions required by an agency designee under part 2635 and this part. The Ethics Counselor or Alternate Ethics Counselor may delegate authority to Deputy Ethics Counselors or to other employees to serve as agency designees for specified purposes. The delegation to any agency designee shall be in writing and cannot be redelegated.

(d) *Definitions.* For purposes of this part:

(1) *Affiliate,* as defined in 12 U.S.C. 1841(k), means any company that controls, is controlled by, or is under common control with another company.

(2) *Appropriate director* means the head of a Washington office or division or the highest ranking official assigned to a regional office in each division or the Ethics Counselor.

(3)(i) *Assisted entity* means:

(A) Any FDIC-insured depository institution which has received financial assistance from the FDIC to prevent its failure;

(B) Any FDIC-insured depository institution resulting from a merger or consolidation with any institution described in paragraph (d)(3)(i) of this section; and

(C) Any holding company of an FDIC-insured depository institution described in paragraphs (d)(3)(i) or (d)(3)(ii) of this section.

(ii) An assisted entity retains its status as an assisted entity for such time as there is an ongoing financial relationship with the FDIC including, but not limited to, a loan repayment obligation, the servicing of assets on behalf of the FDIC, or the retention by the FDIC of stock or stock warrants in the assisted entity.

(4)(i) *Assuming entity* means:

(A) Any FDIC-insured depository institution or FDIC-insured depository institution holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed FDIC-insured depository institution;

(B) Any FDIC-insured depository institution resulting from the transaction described in paragraph (d)(4)(i) of this section and its wholly owned subsidiaries; and

(C) Any branches and the wholly owned subsidiaries of the institutions described in paragraph (d)(4)(i) of this section.

(ii) An assuming entity retains its status as an assuming entity for a period of one year after the failure of the FDIC-insured depository institution.

(5) *Covered employee* means an employee of the Corporation required to file a public or confidential financial disclosure report under 5 CFR part 2634 or 5 CFR part 3202.

(6) *Employee* means an officer or employee, other than a special Government employee, of the Corporation including a member of the Board of Directors appointed under the authority of 12 U.S.C. 1812(a)(1)(C), and a liquidation graded employee. For purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104, *employee* includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

(7) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term

security does not include a deposit account.

(8) *State nonmember bank* means any State bank as defined in 12 U.S.C. 1813(e) which is not a member of the Federal Reserve System.

(9) *Subsidiary,* as defined in 12 U.S.C. 1813(w), means any company which is owned or controlled directly or indirectly by another company.

§ 3201.102 Extensions of credit from FDIC-insured depository institutions.

(a) *Credit subject to this section.* The prohibition, disqualification, and retention provisions of this section apply to a current or contingent financial obligation of the employee. For purposes of this section, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee.

(b) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks applicable to certain high-level officials.* (1) An employee described in paragraph (b)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or its subsidiary, except credit extended through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (b)(1) of this section applies to:

(i) An employee who is a member of the Board of Directors, an assistant or deputy to the Board of Directors or to an appointed Board member, and a covered employee who is an assistant to such person; and

(ii) The director of a Washington office or of a division, other than the Division of Supervision and the Division of Compliance and Consumer Affairs, and a covered employee who holds a position immediately subordinate to such director.

(c) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks for employees assigned to the Division of Supervision and employees assigned to the Division of Compliance and Consumer Affairs.* (1) An employee described in paragraph (c)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or from an officer, director, employee, or subsidiary of such bank, except:

(i) For an employee assigned to the Washington office, credit extended through the use of a credit card on the same terms and conditions as are offered to the general public; and

(ii) For an employee assigned to other than the Washington office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's region of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (c)(1) of this section applies to the Executive Director for Supervision, Resolutions, and Compliance, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, a covered employee immediately subordinate to the Executive Director for Supervision, Resolutions, and Compliance, the Director of the Division of Supervision, or the Director of the Division of Compliance and Consumer Affairs, and the following employees assigned to the Division of Supervision and the Division of Compliance and Consumer Affairs: an Assistant Director, Regional Director, Deputy Regional Director, Assistant Regional Director, Regional Manager, examiner, assistant examiner, review examiner, compliance examiner, assistant compliance examiner, and a covered employee.

(3) Upon accepting credit extended by a credit card in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the employee shall be disqualified in accordance with paragraph (f)(1) of this section, and, within 30 days of accepting such credit, shall file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

(d) *Two-year prohibition on acceptance of credit from FDIC-insured depository institutions.* (1) An employee described in paragraph (d)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured depository institution or its subsidiary for a period of two years from the date of the employee's last personal and substantial participation in an audit, resolution, liquidation, supervisory proceeding, or internal agency deliberation affecting that particular institution, its predecessor or successor, or any subsidiary of such institution. This prohibition does not apply to credit obtained through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (d)(1) of this section applies to an employee in the Division of Finance, Division of Depositor and Asset Services, Division of Resolutions, Legal Division, or who is a member of a standing committee of the Board of Directors whose official duties include:

(i) Audit of insured depository institutions for deposit insurance assessment purposes;

(ii) Resolution or liquidation of failed or failing insured depository institutions;

(iii) Participation in the supervision of insured depository institutions or enforcement proceedings under the Federal Deposit Insurance Act; or

(iv) Internal agency deliberations affecting a particular insured depository institution, its predecessor or successor, or a subsidiary of such institution.

(e) *Prohibition on acceptance of credit from an assisted or assuming entity for employees of the Division of Depositor and Asset Services.* (1) An employee described in paragraph (e)(2) of this section shall not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity located in the employee's region of official assignment. This prohibition does not apply to credit obtained through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (e)(1) of this section applies to a regional director, deputy regional director, and any other covered employee in the Division of Depositor and Asset Services assigned to a service center or other field office.

(f) *Employee disqualification.* (1) An employee described in paragraph (c)(2) of this section shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(2) A covered employee, other than an employee who is described in paragraph (c)(2) of this section, shall not participate in any particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(3) Disqualification is not required under paragraph (f)(2) of this section:

(i) If the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public; or

(ii) When the agency designee, with the concurrence of the appropriate director, has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(4) The Comptroller of the Currency and the Director of the Office of Thrift

Supervision shall be disqualified from matters pending before the Board of Directors to the same extent as a covered employee subject to paragraph (f)(2) of this section.

(g) *Retention and renegotiation of pre-existing extensions of credit.* (1) Nothing in this section prohibits the retention of a pre-existing extension of credit that an employee would be prohibited from accepting by § 3201.102(b) or (c) if the extension of credit was permitted to be retained under 12 CFR part 336 prior to the adoption of this regulation or if the employee's acceptance of the extension of credit was proper at the time the obligation was incurred, as in the case of an extension of credit incurred prior to commencement of employment or reassignment to another division or location. Subsequent action affecting the status of the creditor, such as merger, acquisition, or transaction under 12 U.S.C. 1823, does not change the character of an extension of credit that was proper when incurred. An employee who retains a pre-existing extension that he or she would be prohibited from accepting by § 3201.102(b) or (c) shall report the pre-existing extension of credit to the appropriate director or agency designee within 30 days from the following event, as appropriate:

(i) Adoption of this part;

(ii) Commencement of employment;

(iii) Assignment to another division or location; or

(iv) Action affecting the status of the creditor.

(2) Any renegotiation of a pre-existing extension of credit shall be treated as a new extension of credit that is subject to the prohibitions contained in § 3201.102(b) through (d). An employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing extension of credit. Any such request shall be made in writing to the appropriate director and agency designee, or in the case of an employee described in paragraph (b)(2)(i) and (ii) of this section, to the Ethics Counselor, stating:

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original extension of credit;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered to the employee;

(v) The action the employee has taken to move the loan to an institution from which an employee would not be prohibited from accepting an extension of credit; and

(vi) The financial hardship, if any, denial of the request will cause.

(3) After submission of the request, the appropriate director and agency designee, or the Ethics Counselor, may grant the employee's request based upon a written determination that the request is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

§ 3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.

(a) *Prohibition on ownership.* Except as permitted by this section, an employee or the spouse or minor child of an employee, shall not acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution, or an affiliate of an FDIC-insured depository institution.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from:

(1) Acquiring, owning or controlling the securities of certain publicly traded bank holding companies or their nonbank subsidiaries where the bank holding company is not primarily engaged in banking and either the bank holding company or the bank it holds is exempt under the provisions of the Bank Holding Company Act of 1956 and which are identified as such by the Board of Governors of the Federal Reserve System (a list of exempt institutions can be obtained from the Corporation's Ethics Section);

(2) Acquiring, owning, or controlling the securities of certain nonfinancial savings association holding companies whose principal business is unrelated to the financial services industry and which are identified as such by the Office of Thrift Supervision pursuant to 5 CFR 3101.109(b)(3)(ii) (a list of such institutions can be obtained from the Corporation's Ethics Section);

(3) Retaining a security of an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution if the security was permitted to be retained by the employee under 12 CFR part 336 prior to the adoption of this regulation, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(4) Acquiring, owning, or controlling a security of an FDIC-insured depository institution or the affiliate of an FDIC-insured depository institution where the security was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security. This provision permits the retention of any such interest only where:

(i) The employee makes full, written disclosure on FDIC form 2410/07 to the Ethics Counselor within 30 days of commencing employment or acquiring the interest; and

(ii) The employee is disqualified in accordance with 5 CFR part 2635, subpart D, from participating in any particular matter that affects his or her financial interests, or that of his or her spouse or minor child;

(5) Acquiring, owning, or controlling an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more FDIC-insured depository institutions or FDIC-insured depository institution holding companies and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or

(6) Using an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution as custodian or trustee of accounts containing tax-deferred retirement funds.

(c) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b), the Ethics Counselor may require an employee, or the spouse or minor child of an employee, to divest a security he or she is otherwise authorized to retain under paragraph (b) of this section.

§ 3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.

(a) *Prohibition on purchase of property.* An employee, and an employee's spouse or minor child shall not, directly or indirectly, purchase or acquire any property held or managed by the Corporation or the Resolution Trust Corporation (RTC) as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the

Corporation, regardless of the method of disposition of the property.

(b) *Disqualification.* An employee who is involved in the disposition of assets held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation shall not participate in the disposition of assets held in such capacities when the employee knows that any party with whom the employee has a covered relationship, as defined in 5 CFR 2635.502(b)(1), is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor and the agency designee.

§ 3201.105 Prohibition on dealings with former employers, associates, and clients.

(a) An employee is prohibited for one year from the date of entry on duty with the Corporation from participating in a particular matter when an employer, or the successor to the employer, for whom the employee worked at any time during the one year preceding the employee's entrance on duty is a party or represents a party to the matter.

(b) For purposes of this section, the term *employer* means a person with whom the employee served as officer, director, trustee, general partner, agent, attorney, accountant, consultant, contractor, or employee.

(c) The one-year prohibition imposed by paragraph (a) of this section, and the one-year period preceding the employee's entrance on duty specified in paragraph (a) of this section, may each be extended in an individual case based on a written determination by the agency designee that, under the particular circumstances, the employee's participation in the particular matter would cause a reasonable person with knowledge of the facts to question his or her impartiality.

§ 3201.106 Employment of family members outside the Corporation.

(a) *Disqualification of employees.* An employee shall not participate in an examination, audit, investigation, application, contract, or other particular matter if the employer of the employee's spouse, child, parent, brother, sister, or a member of the employee's household is a party or represents a party to the matter, unless an agency designee authorizes the employee to participate using the standard in 5 CFR 2635.502(d).

(b) *Reporting certain relationships.* A covered employee shall make a written report to an agency designee within 30 days of the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's household by:

(1) An FDIC-insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Corporation has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Corporation.

§ 3201.107 Outside employment and other activities.

(a) *Prohibition on employment with FDIC-insured depository institutions.* An employee shall not provide service for compensation, in any capacity, to an FDIC-insured depository institution or an employee or person employed by or connected with such institution.

(b) *Use of professional licenses.* A covered employee who holds a license related to real estate, appraisals, securities, or insurance and whose official duties with the Corporation require personal and substantial involvement in matters related to, respectively, real estate, appraisal, securities, or insurance is prohibited from using such license, other than in the performance of his or her official duties, for the production of income. The appropriate director, in consultation with an agency designee, may grant exceptions to this prohibition based on a finding that the specific transactions which require use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Responsibility to consult with agency designee.* An employee who engages in, or intends to engage in, any outside employment or other activity that may require disqualification from the employee's official duties shall consult with an agency designee prior to engaging in or continuing to engage in the activity.

§ 3201.108 Related statutory and regulatory authorities.

(a) 18 U.S.C. 213, which prohibits an examiner from accepting a loan or gratuity from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) 18 U.S.C. 1906, which prohibits disclosure of information from a bank examination report except as authorized by law.

(c) 17 CFR 240.10b–5 which prohibits the use of manipulative or deceptive devices in connection with the purchase or sale of any security.

(d) 18 U.S.C. 1909, which prohibits examiners from providing any service for compensation for any bank or person connected therewith.

§ 3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.

The following provisions of 5 CFR part 2635 are not applicable to employees of the Corporation:

(a) Because of the restrictions imposed by 18 U.S.C. 213 on examiners accepting loans or gratuities, an examiner in the Division of Supervision or Division of Compliance and Consumer Affairs may not use any of the gift exceptions at 5 CFR 2635.204 to accept a gift from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) Provisions of 41 U.S.C. 423 (Procurement integrity) and the implementing regulations at 48 CFR 3.104 (of the Federal Acquisition Regulation) applicable to procurement officials referred to in:

(1) 5 CFR 2635.202(c)(4)(iii);

(2) The note following 5 CFR 2635.203(b)(7);

(3) Example 5 following 5 CFR 2635.204(a);

(4) Examples 2 and 3 following 5 CFR 2635.703(b)(3);

(5) 5 CFR 2635.902(f), (h), (l), and (bb);

(c) Provisions of 31 U.S.C. 1353 (Acceptance of travel and related expenses from non-Federal sources) and the implementing regulations at 41 CFR part 304–1 (Acceptance of payment from a non-Federal source for travel expenses) referred to in 5 CFR 2635.203(b)(8)(i).

(d) Provisions of 41 CFR Chapter 101 (Federal Property Management Regulations) referred to in 5 CFR 2635.205(a)(4).

(e) Provisions of 41 CFR Chapter 201 (Federal Information Resources Management Regulation) referred to in Example 1 following 5 CFR 2635.704(b)(2).

12 CFR CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for part 336 is revised to read as follows:

Authority: 5 U.S.C. 7301; 12 U.S.C. 1819(a).

3. Section 336.1 is revised to read as follows:

§ 336.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Deposit Insurance Corporation (Corporation) are subject to the Executive Branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Corporation regulation at 5 CFR part 3201 which supplements the Executive Branch-wide Standards, the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634, and the Corporation regulation at 5 CFR part 3202 which supplements the Executive Branch-wide financial disclosure regulations.

§§ 336.2–336.23 [Removed]

§§ 336.29–336.37 [Removed]

Appendix to Part 336 [Removed]

4. Sections 336.2 through 336.23 and 336.29 through 336.37 and all subpart headings are removed and reserved and the appendix to part 336 is removed.

[FR Doc. 95–9733 Filed 4–24–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–91–010A]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule [DA–91–010A], published Wednesday, March 1, 1995 [60 FR 11246]. The regulations related to changes in the United States Standards for Grades of Colby Cheese.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections inadvertently omitted the word ''not'' in the third sentence of 7 CFR 58.2475. This omission created an error in the maximum moisture content for colby cheese.

Need for Corrections

As published, the final rule contained an error which needs to be corrected to provide accuracy.

§ 58.2475 Colby cheese. [Corrected]

On page 11247, at the top of the third column, in § 58.2475, in sentence three of the paragraph, after ''common salt and'' and before ''more than 40 percent moisture'' add the word ''not''.

Dated: April 19, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–10154 Filed 4–25–95; 8:45 am]

BILLING CODE 3410–02–M

Food and Consumer Service

7 CFR Parts 272 and 274

[Amendment No. 333]

RIN 0584–AB32

Food Stamp Program: Benefit Delivery Rule

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking finalizes three Food Stamp Program provisions relating to benefit delivery. These regulations relate to the staggered issuance of benefits on Indian reservations, combined or aggregate allotments, and the issuance of benefits in rural areas where households may experience difficulty in obtaining program benefits.

In addition to the regulatory changes described above, this rule makes final three minor technical changes in current regulatory issuance provisions which are deemed appropriate by the Department to improve benefit issuance.

DATES: The amendments to §§ 272.2(a)(2) and (d)(1)(xi), and §§ 274.2(a), (c), and (g) are effective February 1, 1992. State agencies were instructed through an agency directive dated May 20, 1992, to implement these provisions on that date. The amendment to § 274.2(d)(2) is effective March 25, 1994. State agencies were instructed through an agency directive dated March 31, 1994, to implement this provision on that date. All remaining amendments are effective September 1, 1995.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, telephone (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this final rule will not have a significant impact on a substantial number of small entities. The requirements of the rule will affect State and local agencies which administer the Food Stamp Program, as well as food stamp applicants and recipients.

Paperwork Reduction Act

The provisions of this final rule do not contain record-keeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and set out at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 and set out at 7 CFR 276.7; and (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 and set out at 7 CFR 278.8.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Public Participation

Section 274.2(c) is simply a restatement of existing Food Stamp Program regulations regarding the obligation of State agencies to provide combined or aggregate allotments in certain circumstances and makes no changes in existing policy. Section 274.2(d)(2) is the regulatory adoption of Section 102 of Pub. L. 103–225 regarding the availability of staggered issuance of benefits on Indian reservations. Therefore, the amendments to 7 CFR 274.2(c) and (d)(2) are being issued as final rules without prior notice and public comment. The language of § 274.2(d)(2) is the same as that employed in Pub. L. 103–225. Section 102 of Pub. L. 103–225 is non-discretionary in that it makes an existing policy, staggered issuance, available to Indian reservations for at least 15 days per month at the request of the tribal governing authority. Because of the non-discretionary nature of the amendments to 7 CFR 274.2(c) and (d)(2), the Department has determined, pursuant to 5 U.S.C. 553, that public comment on these provisions prior to implementation is unnecessary as it would serve no practical purpose.

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of Pub. L. 101–624, enacted November 28, 1990) amended three provisions of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) (the Act), relating to the timing and method of benefit delivery (issuance). These amendments related to staggered issuance of benefits on Indian reservations, aggregate (combined) allotments to households applying after the 15th of the month, and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits.

The Department issued a proposed rulemaking and sought comments on these three provisions of Pub. L. 101–624 on May 20, 1991, at 56 FR 23027. In the same publication, the Department also announced its intent to make three minor technical changes to existing issuance provisions deemed appropriate to improve benefit issuance. Comments were sought on these changes as well. Each of the six regulatory changes proposed on May 20, 1991, will be separately discussed in this rulemaking.

The 1990 Amendments (Pub. L. 101–624): Comments and Analyses

1. Section 1728 of Pub. L. 101–624 amended Section 7(h)(1) of the Act, 7 U.S.C. 2016(h)(1) to mandate the use of staggered issuance throughout the month on Indian reservations. This provision reflected the findings of a GAO audit (Recipient and Expert Views on Food Assistance at Four Indian Reservations, GAO/RCED 90–152, dated June 28, 1990) in which auditors were told by recipients that each month certain retail food stores authorized to accept food stamps on or near reservations were increasing the prices of eligible food during the week containing the one or more issuance days.

Subsequent to the publication of the proposed rule on this issue, Congress enacted Section 908 of Pub. L. 102–237, delaying the implementation of Section 1728 of Pub. L. 101–624 until April 1, 1993. Section 908 of Pub. L. 102–237 directed GAO to report to Congress by June 13, 1992, on the difficulties that residents on Indian reservations experience in obtaining benefits. The study was to examine prices at food stores, determine issuance-period preferences of households, analyze any transportation problems that may exist, and examine monthly reporting requirements.

On November 25, 1992, GAO released Letter Report RCED–93–70R concerning the need for staggered issuance on Indian reservations. This report summarized comments from 13 State agencies and two national Indian organizations, but arrived at no conclusive recommendation.

Due in significant part to the inconclusive nature of the GAO Report, Congress, on April 1, 1993, in Pub. L. 103–11, ''Food Stamp Requirements on Indian Reservations: Delay,'' delayed implementation of the mandatory staggered issuance requirement of Section 1728 of Pub. L. 101–624, until January 24, 1994. Implementation of Section 1728 was further delayed until March 15, 1994, by section 1 of Pub. L. 103–205, ''Food Stamp Program on Indian Reservations,'' on December 17, 1993.

With section 102 of the Food Stamp Improvements Act of 1994, Pub. L. 103–225, enacted on March 25, 1994, Congress amended Section 7(h)(1) of the Act by deleting the mandatory requirement for staggered issuance on Indian reservations, which had been provided for in Section 1728 of Pub. L. 101–624, and making staggered issuance on Indian reservations discretionary with each tribal organization. Section 7(h)(1) of the Act, 7 U.S.C. 2016(h)(1), now provides that staggered issuance shall be provided to tribal organizations by State agencies over a period of at least 15 days each month if so requested by the organization exercising governmental jurisdiction over the reservation.

In light of the amendment to section 7(h)(1) of the Act by section 102 of Pub. L. 103–225, making staggered issuance an Indian tribal organization option, the Department believes that a lengthy discussion of the public comments on the proposed rule, pertaining to the parts of the statutory provision which were amended, is no longer necessary, since the comments, while appreciated, are no longer relevant. The Department also believes that the implementation of section 102 of Pub. L. 103–225 does not require public comment. Congress has given the Department and State agencies no discretion and no options with regard to the use of staggered issuance on Indian reservations; the sole discretion to be exercised is with Indian tribal organizations. Under the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553, public comment on a regulatory change is not required if that comment would serve no practical purpose. As a reflection of the Department's absence of discretion in this matter, the Department hereby implements as a final rule without prior notice and comment section 102 of Pub. L. 103–225 in regulatory language identical to that employed by Congress in the legislation. This provision will be located at § 274.2(d)(2).

2. In the May 20, 1991, rulemaking published at 56 FR 23027, the Department sought comments on its proposal to implement section 1732 of Pub. L. 101–624. That provision amended section 8(c)(3) of the Act, 7 U.S.C. 2017(c)(3), to change program requirements concerning aggregate benefits (combined benefits for the month of application and the first full month of benefit receipt) for eligible households applying after the 15th of the month. Prior to the amendment, section 8(c)(3) required that an initial allotment reflecting an aggregate of prorated benefits for the application month and benefits for the first full month was required if the application was made after the 15th day of the month. Amended section 8(c)(3) made

the combined allotment a State agency option for eligible households applying under normal processing standards. Despite the amendment to section 8(c)(3), combined allotments, however, remained mandatory for eligible households that met the requirements for expedited service. This program change was implemented by State agencies retroactively to February 1, 1992, pursuant to an FNS directive dated May 20, 1992.

To implement section 1732 of Pub. L. 101–624 in the Code of Federal Regulations, the Department proposed amendments to several paragraphs of § 274.2(b). Subsequently, it was determined that program regulatory provisions regarding eligibility for combined allotments would more appropriately be located in § 273.2(i) of program regulations, which deals with household application requirements. A rule reflecting this redesignation, including the adoption as final of the changes previously proposed for § 274.2(b), will be published in the near future. Comments received on this program change in response to the May 20, 1991, proposed rule will be discussed in that rulemaking.

The effect of the above-described modification will be to locate in part 273 of the program regulations all provisions regarding eligibility for combined or aggregate allotments. Section 274.2 will contain only program provisions regarding State agency benefit issuance requirements. To reflect this redesignation, the Department adopts as a final rule an amendment to § 274.2, paragraph (c), which simply restates existing program policy with regard to State agency obligations concerning combined allotments. As § 274.2(c) summarizes existing regulations and makes no changes to those regulations, the Department, pursuant to 5 U.S.C. 553, deems prior notice and public comment on this regulatory provision to be unnecessary.

3. Section 1738 of Pub. L. 101–624 amended section 11(e) of the Act, 7 U.S.C. 2020(e), to require State agencies to use mail issuance in rural areas where State agencies determine that recipients face substantial difficulties in obtaining transportation to issuance points. Amended section 11(e) provides an exception to mandatory mail issuance for households which have experienced excessive mail issuance losses. In addition, mail issuance is not required in localities where the mail loss rates exceed standards set by the Secretary. This amendment was prompted by concern that some eligible households in rural areas have difficulty getting to issuance sites because they lack cars or sufficient funds to hire someone to drive them (House Report No. 101–569, pages 433–34).

Under the proposed rule, a State agency which is not currently using mail issuance throughout the State must engage in an assessment of transportation barriers which rural recipients may experience in getting to issuance offices, and report both the assessment process and its results as an attachment to its State Plan of Operation. Section 272.2 of the regulations is revised to add this requirement to the State Plan of Operation. Section 274.2 is also revised to add a new subsection describing the required content of this new attachment to the State Plan of Operation.

In enacting Section 1738 of Pub. L. 101–624, Congress was concerned with transportation problems that make it difficult for recipients to obtain their benefits at issuance offices (House Report No. 101–569, pages 433–34). These problems, rather than transportation problems in general, should be the focus of the State agency's assessment of the need for mail issuance. For example, mail issuance is not required where electronic benefits transfer (EBT) removes the need for transportation to an issuance office. As an alternative to mail issuance, State agencies finding substantial transportation difficulties could reduce or eliminate them by a variety of methods, such as through the use of authorized representatives as provided for in 7 CFR 274.5.

To implement the exception to mail issuance for individual households that experience excessive mail losses, the Department proposed to use the current standard at 7 CFR 274.6(c)(3)(ii), which provides that households experiencing two losses or thefts of benefits from the mail within a six-month period shall be placed on an alternative delivery system.

To implement the exception to mail issuance in amended Section 11(e)(25) of the Act for localities with excessive mail losses, the Department proposed to utilize the standards set by the mail issuance loss tolerance levels provided at 7 CFR 276.2(b)(4). State agencies would not have to use mail issuance where mail losses exceed, or could reasonably be expected to exceed, the mail loss tolerance levels for the reporting unit within which the particular rural area is located. Section 276.2(b)(4) provides three separate mail issuance tolerance levels. The applicable mail loss tolerance level depends on the size of the reporting unit. In determining whether mail losses in a given rural area would be excessive, State agencies without mail issuance in that area may use the tolerance level associated with a hypothetical reporting unit. Tolerance levels applied to any hypothetical reporting area would have to be consistent with existing rules and any existing reporting units. For example, States with some mail issuance in place, and currently reporting issuance losses by project areas, could not exempt a rural area without mail issuance from the mail issuance requirements of amended Section 11(e)(25) on the basis of its losses exceeding a State-wide tolerance. Similarly, a State agency that does not have mail issuance would have to use the same tolerance levels in assessing any rural areas subject to this rule; the State could not exempt some areas because they would exceed the State-wide tolerance level and other areas because they would exceed the project area tolerance level. States which choose not to introduce mail issuance based upon findings that losses would exceed tolerance levels will be required to provide evidence to support such findings.

Three comments were received on these proposals. One State agency was concerned that the provision requiring mail issuance would eliminate the State's current practice of offering recipients either mail issuance or direct delivery of benefits. This is not the case. State agencies may accommodate individual household requests; the requirement is to provide or offer mail issuance as a means of overcoming transportation difficulties. Another commenter was concerned that the proposed provisions might overturn established efforts and procedures geared to reduce mail losses. It would subvert the purpose of the legislation, namely to encourage mail issuance, if the implementing rules prevented reductions in mail losses that in turn created pressures to abandon mail issuance altogether. Therefore, the Department will not require mail issuance in situations in which State agencies can demonstrate that losses incurred in attempts to issue benefits by mail in rural areas would be excessive. The third comment came from a State agency which stated that it would not be affected by the provision because the State currently has statewide direct-mail issuance.

The wording in the first sentence of the proposed paragraph has been revised slightly for conformity with the description of other planning documents listed in 7 CFR 272.2(d). This minor change does not alter the intent of the provision.

Accordingly, with this final rule, the wording of the proposed rule, with the exception noted above, is adopted.

Changes to Current Regulations

On February 15, 1989, at 54 FR 6990, the Department issued a final rule constituting the first comprehensive review and modification of food stamp issuance regulations since their adoption pursuant to the Food Stamp Act of 1977 (Pub. L. 95–113).

This final rule makes changes to three of those provisions, in an effort to clarify interpretive problems brought to the Department's attention over the past three years. These changes were proposed on May 20, 1991, at 56 FR 23028–29.

4. In the May 20, 1991, proposed rule the Department suggested changes to make clear that staggering may be used in any issuance system and that the 40-day limit on intervals between issuances applies to all issuance systems. Current rules at § 274.2(c)(1) refer to a 40-day limit between ''mail issuances'' because, in the past, State agencies staggered only mail issuance. The word ''mail'' is being removed to make it clear that the 40-day limit applies to all staggered issuance situations, and to remove any implication that staggering is relevant only to mail issuance.

Whenever staggered issuance is utilized, the State agency must ensure that the interval between any two issuances after the first full month of participation is not longer than 40 days as required by Section 7(h) of the Act, 7 U.S.C. 2016(h)(2). This applies to instances in which a State agency changes its issuance system, is starting to stagger within any issuance system, decides to no longer stagger within a system, or is fluctuating the issuance schedule by a day or two within a current staggered system. The only exception to the 40-day limit occurs for some households which apply after the 15th of the month and receive their first and second month's benefit as a combined allotment. Since they may receive their benefits for the first and second months of participation in the first month, more than 40 days may elapse before they are put on a regular issuance schedule, beginning with benefits issued for the third month.

Three commenters addressed this proposal. One stated that households which are required to submit monthly reports may have to wait as long as 50 days between issuances. Such an interval would only be permissible in situations in which the State agency is required to wait for the household to meet its monthly reporting requirement. The 40-day rule pertains to on-going households which have complied with all reporting requirements and expect their benefits at about the same time every month.

Another commenter was concerned that the Department is reading something into the law which established the 40-day requirement that Congress did not intend, and that more than 40 days should be allowed under normal fluctuations within an established staggered issuance system. The Department disagrees; intervals beyond 40 days between normal issuances do not meet the requirement of the law and its legislative history. The 40-day requirement is an extension of the requirement at 7 CFR 274.2(c), which states that issuance schedules shall be established so that households receive benefits on or about the same time each month. The amendment gives State agencies room to adjust issuance schedules when issuance systems are being changed, rather than holding the State agency to the requirement that households receive benefits on or about the same day each month. The Department considers the amendment less restrictive, not more so.

The provision in this rule has been reworded to state more clearly the situations to which it applies. This also addresses a third commenter who said the 40-day rule is simply burdensome.

With this final rule, the Department adopts as final 7 CFR 274.2(c)(1) as proposed to indicate that the requirements of staggered issuance are applicable to all issuance systems.

5. The regulations at 7 CFR 274.3(e) currently provide for validity periods for issuances made in authorization document, direct access, and direct delivery issuance systems. A validity period is the time-frame during which a household may obtain benefits by transacting an authorization document or receiving benefits at an issuance point. The validity period begins the day a household is issued an authorization document or is authorized to obtain its issuance at an issuance point. The validity period for issuances ends on the last day of the month in which authorization to receive benefits is made, with two exceptions. First, for normal issuances made on or after the 20th day of the month, the State agency must extend the validity or availability period at least 20 days into the following month and may extend the validity or availability period until the end of the following month; second, for combined issuances for households applying after the 15th of the month, the validity period must continue until the end of the month following application since benefits for which the household is eligible are intended for use during both months. States have pointed out that Program administration would be simplified if normal issuances made after the 15th of the month could have the same validity period as the validity period for combined issuance made in the month of application. The proposed rule addressed that concern by changing the issuance date that initiates an extension for validity periods for normal issuances from ''on or after the 20th'' to ''after the 15th'' of the month.

Three commenters addressed this provision. One simply stated the amount of time (3 months) that would be required to make the necessary computer changes, but made no statement for or against the provision. Another commenter questioned whether the new trigger date would allow State agencies to retain the option to extend the validity period for normal issuances for 20 days or until the end of the following issuance month. The answer to this question is that, as stated in the proposed rule, State agencies will retain the option. The third commenter suggested that the provision of having the validity dates coincide be optional because of the time and expense required in modifying the State agency's on-line issuance computer. Because this provision was adopted in response to State agency requests as a means of easing the Program's administrative burden, the Department is making this date change an option for State agencies. The Department would also like to clarify that when a combined allotment is issued with the use of two documents in authorization document systems during the month of application, the validity period for both documents must continue until the end of the second month, as that is the period of intended use for the combined benefits.

With this final rule, the Department adopts as final 7 CFR 274.3(e) as previously proposed by making the proposed modification of the validity period for normal issuances a State agency option.

6. In 7 CFR 274.11(a) a change was proposed by the Department to clarify which issuance documents, including signature cards used by direct-delivery agents, are required to be retained for three years in order to provide an audit trail for accountability. The current regulation at 7 CFR 274.11(a)(1) lists specific forms required to be retained. However, as established issuance systems have changed and newer ones have been implemented, the list has not been revised. The Department proposed to replace the listing of specific forms with a general retention requirement covering all issuance system documents

which provide an audit record for accountability. An additional change made the wording about the period of retention conform to 7 CFR 272.1(f).

The one commenter responding to the Department's proposal stated that the provision would not affect the program operations of that State. Wording and punctuation within the first ten words in paragraphs (a) and (a)(1) of 7 CFR 274.11 are revised slightly from the proposed rule to make clearer the fact that the provision addresses four separate groups of documents to be retained—issuance records, inventory records, reconciliation records, and other records. These latter changes do not affect the meaning or intent of the proposed rule.

Therefore, the wording of the proposed rule, regarding sections 7 CFR 274.11(a) and (a)(1) with the exception noted above, is adopted as final.

Dates

1. *Effective.* Section 1738 of Pub. L. 101–624 was effective February 1, 1992. Section 102 of Pub. L. 103–225 was effective March 25, 1994. The effective date for the amendments to 274.2(d)(1), 274.3(e), and 274.11(a) is September 1, 1995.

2. *Implementation.* The implementation date for Section 102 of Pub. L. 103–225 was March 25, 1994. The implementation date for Section 1738 of Pub. L. 101–624 was February 1, 1992. By that date, or soon thereafter, States should have submitted to FCS, an approvable amendment to the State Plan of Operation, for direct-mail issuance in rural areas. The timetable for actual implementation of any new direct-mail issuance system will be set by the State agency, with FCS approval. The implementation date for the amendments to 274.2(d)(1), 274.3(e), and 274.11(a) is September 1, 1995.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

As stated in the Preamble, parts 272 and 274 of chapter II of Title 7, Code of Federal Regulations, are amended as follows:

1. The authority citation for parts 272 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(140) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(140) *Amendment No. 333.* The provisions of Amendment No. 333 are effective and must be implemented as follows:

(i) The provisions relating to aggregated (combined) allotments to households applying after the 15th of the month and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits are effective and must be implemented by statute retroactive to February 1, 1992.

(ii) The provision relating to staggered issuance on Indian reservations was in place on March 25, 1994, is effective and must be implemented according to statute retroactive to March 25, 1994.

(iii) The remaining provisions are effective and must be implemented September 1, 1995.

3. In § 272.2, a new sentence is added to the end of paragraph (a)(2), and a new paragraph (d)(1)(xi) is added, to read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) *Content.* * * * The Plan's attachments shall describe the State agency's review of direct-mail issuance requirements in rural areas.

* * * * *

(d) *Planning Documents.*

(1) * * *

(xi) A plan to review direct-mail issuance requirements in rural areas. State agencies using direct-mail issuance throughout the State with exceptions only for individual households, shall simply state this fact. State agencies which use methods of benefit issuance other than direct-mail issuance in any part of the State shall submit an attachment to their State Plan of Operation which includes the State agency's procedure for reviewing direct-mail issuance requirements in rural areas, and the results of applying that procedure for designating parts of, or entire, project areas as requiring direct-mail issuance because they are rural, and are areas in which benefit-eligible households face substantial difficulties in obtaining transportation. The requirements for this attachment to the State Plan of Operation are described in § 274.2(g) of this chapter.

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

4. In § 274.2:

a. a new sentence is added at the end of paragraph (a);

b. the heading of paragraph (b) is revised;

c. paragraphs (b)(2), (b)(3), and (b)(4) are removed;

d. paragraphs (b)(1), (c), (d), and (e) are redesignated as paragraphs (b), (d), (e), and (f), respectively;

e. two new sentences are added at the end of newly-redesignated paragraph (b);

f. newly-redesignated paragraph (d)(1) is revised;

g. paragraphs (d)(2) and (d)(3) are redesignated as paragraphs (d)(3) and (d)(4), respectively;

h. newly-redesignated paragraph (d)(3) is revised; and

i. new paragraphs (c), (d)(2) and (g) are added.

The additions and revisions read as follows:

§ 274.2 Providing benefits to participants.

(a) *General* * * * Requirements to assure timely and accurate issuance of benefits to eligible households in rural areas are described in paragraph (g) of this section.

(b) *Availability of benefits.* * * * For households entitled to expedited service, the State agency shall make benefits available to the household not later than the fifth calendar day following the date of application. Whatever system a State agency uses to ensure meeting this delivery standard shall be designed to allow a reasonable opportunity for redemption of ATPs no later than the fifth calendar day following the date of application.

(c) *Combined allotments.* For those households which are to receive a combined allotment, the State agency shall provide the benefits for both months as an aggregate (combined) allotment, or as two separate allotments, with the same validity period, made available at the same time, in accordance with the timeframes specified in § 273.2 of this chapter.

(d) *Ongoing households* * * *

(1) State agencies that use direct-mail issuance shall stagger issuance over at least 10 days of the issuance month, and may stagger issuance over the entire issuance month. State agencies using a method other than direct-mail issuance may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a

household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) Upon the request of the tribal organization that exercises governmental jurisdiction over a reservation, the State agency shall stagger the issuance of benefits for eligible households located on reservations for at least 15 days each month.

(3) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. The 40-day requirement does not apply to instances in which actions by recipients, such as failure to submit a monthly report, disrupt benefits. Transfers include, but are not limited to, households being moved into or out of a staggered issuance procedure, households on a fluctuating schedule within a staggered system, and households being moved from a direct-mail issuance system to an authorization document system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

* * * * *

(g) *Issuance in rural areas.* State agencies shall use direct-mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation in order to obtain their food stamp benefits by methods other than direct-mail issuance. Exceptions shall be made for households which have exceeded the two allowable reported losses within a six-month period and replacements set forth in § 274.6 (b) and (g), and direct-mail issuance is not required in those localities where the direct mail loss rates exceed, or are likely to exceed, standards set by the Secretary at § 276.2(b) of this chapter. The State agency shall:

(1) Submit an attachment to the State Plan of Operation (§ 272.2(d)(1)(xi) of this chapter) which describes the State's exemption from this requirement, because the State agency uses direct-mail issuance throughout the State, or

(2) Submit an attachment to the State Plan of Operation (§ 272.2(d)(1)(xi) of this chapter) which describes:

(i) The areas designated by the State agency as rural;

(ii) The rural areas where direct-mail issuance will not be used because:

(A) Recipients do not face substantial difficulties in obtaining transportation to obtain their benefits, and/or;

(B) Direct-mail issuance losses exceed the loss tolerance levels, or there is evidence which indicates that direct-mail issuance, if used, would produce losses which would exceed the loss tolerance levels established under § 276.2(b)(4) of this chapter.

(iii) The State agency's criteria for designating an area as rural. Such criteria may include, but are not limited to: the use of the Bureau of the Census definition; the distances that recipients may need to travel to reach an issuance office; or, other criteria described by the State agency.

(iv) The State agency's minimum criteria for determining that recipients in an area designated as rural do not face substantial difficulties in obtaining transportation to obtain their benefits.

(v) The State agency's schedule for introducing direct-mail issuance into any rural areas requiring direct-mail issuance because of substantial transportation problems.

5. In § 274.3, paragraph (e)(1) is revised to read as follows:

§ 274.3 Issuance systems.

* * * * *

(e) *Validity periods.* (1) State agencies shall establish validity periods for issuances made in both authorization document and direct access systems. A validity period is the time frame during which a household may obtain benefits by transacting an authorization document, or receiving the benefits directly at an issuance point. Generally, the validity period coincides with the issuance month or the period of intended use, which may or may not be a calendar month. However, in instances in which authorization documents are distributed, or benefits become available for ongoing households late in the issuance month, the State agency shall extend the validity or availability period for either twenty (20) additional days, or until the end of the following issuance month, at the State agency's option. The State agency may also choose one of two dates which will initiate this extension of the validity or availability period. The State agency may choose to extend the period for authorization documents distributed or for benefits made available, on or after the 20th day of the issuance month or after the 15th day of the issuance month. Whichever date the State agency chooses to initiate the required extension, the State agency must use the date consistently for all extensions in this category. A household which does not transact its authorization document, or obtain the benefits directly from an issuance point during the issuance's validity period, shall lose its entitlement to the benefits, and the State agency shall not issue benefits to such a household for such a period.

* * * * *

6. In § 274.11, the section heading, the heading and introductory text of paragraph (a), and paragraph (a)(1) are revised to read as follows:

§ 274.11 Issuance and inventory record retention, and forms security.

(a) *Availability of records.* The State agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years as specified in § 272.1(f) of this chapter. This period may be extended at the written request of FNS.

(1) Issuance, inventory, reconciliation, and other accountability records shall include all Agency, State, and local forms involved in the State agency's receipt, storage, handling, issuance, and destruction of coupons completed by contract agents or any other individuals or entities involved in issuance or inventory, as well as those completed by the State agency.

* * * * *

Dated: April 11, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–10091 Filed 4–24–95; 8:45 am]

BILLING CODE 3410–30–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AA38

Standards for Protection Against Radiation; Clarification

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; clarification.

SUMMARY: A final rule was published in the **Federal Register** on December 22, 1993 (58 FR 67657) that made a number

of conforming amendments to the NRC's standards for protection against radiation. References to the former 10 CFR Part 20 were removed from the revised Part 20, and, in that process, certain requirements not intended to be removed were inadvertently deleted. This final rule reinstates those requirements to retain records generated under the previously existing provisions of Part 20 which were intended to remain in effect.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas or Jayne M. McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6230 or 415–6219, email MLT1@NRC.GOV or JMM2@NRC.GOV.

SUPPLEMENTARY INFORMATION: On May 21, 1991 (56 FR 23360), the Nuclear Regulatory Commission (NRC) published its revised standards for protection against radiation (10 CFR 20.1001–20.2401 and the associated appendices). The revised standards for protection against radiation incorporated scientific information and reflected changes in the basic philosophy of radiation protection that had occurred since the promulgation of the original regulations. The revisions conformed the Commission's regulations to the ''Presidential Radiation Protection Guidance to Federal Agencies for Occupational Exposure'' and to recommendations of national and international radiation protection organizations. The revised standards for protection against radiation became effective on June 20, 1991. However, NRC licensees were permitted to defer the mandatory implementation of these regulations until January 1, 1994.

On December 22, 1993 (58 FR 67657), the NRC published a final rule, effective on January 1, 1994, that removed or modified a number of provisions to reflect the effective date for NRC's revised standards for radiation protection. It has been determined that several requirements, scheduled for removal or modification by the December 22, 1993 rulemaking, should not have been removed or modified because they have continuing effect beyond the January 1, 1994, effective date for 10 CFR Part 20. Accordingly, the current action restores those requirements that were incorrectly modified or removed by the December 22, 1993, rulemaking.

Specifically, this action is necessary to clarify the Commission's intent in 10 CFR Part 20 to require that licensees continue to retain the following records until the Commission terminates the pertinent license:

(1) Records of surveys which were required by the formerly applicable § 20.401(c)(2) (i), (ii), and (iii), such as records of the results of surveys to determine the external radiation dose in the absence of personnel monitoring data to ensure compliance with NRC regulations concerning the concentrations of radioactive materials in air (formerly applicable 10 CFR Part 20 Appendix B), and records of the results of surveys used to evaluate the release of radioactive effluents to the environment;

(2) Records used in the preparation of NRC Form 4, such as records of the individual's occupational exposure from former employers which were required by the formerly applicable § 20.102(c)(2);

(3) Waste shipment manifests and documentation of acknowledgement of receipt which were required by the formerly applicable §§ 20.311(d)(7), (e)(5), (f)(8), and (g)(2);

(4) Records of radiation monitoring which were required by the formerly applicable § 20.401(c)(1);

(5) Records of disposal into sanitary sewers, by land burial, and other approved disposals which were required by the formerly applicable § 20.401(c)(3).

2. In addition, this action is necessary to correct the reference to ''appendices A, B, C, D, or F to §§ 20.1001–20.2401'' to read ''appendices B, C, D, or F to part 20'' in § 20.1201 (d) and (e), § 20.1204(c)(3), (e)(i), and (h)(2), § 20.1302 (b)(2)(i) and (c), § 20.1502(b)(1), § 20.1703 (b)(1), (b)(2), and (d), § 20.1704, § 20.1902(e), § 20.1905 (a) and (b), § 20.1906(d), § 20.2003 (a)(2) and (a)(3)(i), § 20.2006 (a), (b), (c), and (d), § 20.2201 (a)(i), (a)(ii), and (b)(2)(ii), § 20.2203(d), and § 20.2204.

3. To be consistent with the ALARA definition found in § 20.1003, the word ''practicable'' is changed to read ''practical'' in §§ 20.1701, 20.1702, 20.1906(c), and Appendix F to Part 20.

4. Finally, in Appendix C to 10 CFR Part 20, Quantities of licensed material requiring labeling, the quantity for Carbon-14 is corrected to read ''100'' rather than ''1000.'' This change corrects a typographical error.

These amendments are corrective in nature, restore provisions inadvertently deleted in prior amendments, and correct reference and typographical errors found in the aforementioned sections of the revised 10 CFR part 20 (December 22, 1993; 58 FR 67657). Because the opportunity for public comment was previously provided for the changes which formed the basis for the December 22, 1993, amendments (May 21, 1991; 56 FR 23360 and August 26, 1992; 57 FR 38588), and because the proposed changes are minor corrective amendments, the NRC has determined that good cause exists to dispense with the notice and comment provisions of the Administrative Procedures Act (APA) pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the NRC has determined that good cause exists to waive the 30-day deferred effective date provisions of the APA (5 U.S.C. 553(d)).

Enforcement

During the interim period from January 1, 1994 to the present, there has been no explicit requirement that licensees retain the five categories of records addressed in this rule that were required under the old Part 20. Therefore, a violation will not be cited in any case in which a licensee discarded the records during this period. In the case of a licensee that retained any of the five categories of records but discards those records *after the effective date of this rulemaking,* a violation may be cited in accordance with the NRC Enforcement Policy.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

Regulatory Analysis

This final rule is administrative in that it reinstates provisions inadvertently removed from the text of an existing regulation and corrects errors found in the revised 10 CFR Part 20. These amendments will not have a significant impact. Therefore, the NRC has not prepared a separate regulatory analysis for this final rule. The final regulatory analysis for the May 21, 1991, final rule examined the costs and benefits of the alternatives considered by the Commission in developing the revised standards for protection against radiation and is available for inspection

in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20037.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provision that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553 the NRC is adopting the following amendments to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (2 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

§ 20.1201 [Amended]

2. In § 20.1201, paragraphs (d) and (e) are amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.1203 [Amended]

3. Section 20.1203 is amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.1204 [Amended]

4. In § 20.1204, paragraphs (c)(3), (e)(1), and (h)(2) are amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.1302 [Amended]

5. In § 20.1302, paragraphs (b)(2)(i) and (c) are amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.1502 [Amended]

6. In § 20.1502, paragraph (b)(1) is amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.1701 [Amended]

7. Section 20.1701 is amended by deleting the word ''practicable'' and replacing it with the word ''practical.''

§ 20.1702 [Amended]

8. Section 20.1702 is amended by deleting the word ''practicable'' and replacing it with the word ''practical.''

9. In § 20.1703, paragraph (b)(1), the introductory text of paragraph (b)(2), and paragraph (d) are revised to read as follows:

§ 20.1703 Use of individual respiratory protection equipment.

* * * * *

(b) * * *

(1) The licensee selects respiratory protection equipment that provides a protection factor (see Appendix A, Part 20) greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Appendix B to Part 20, Table 1, column 3. If the selection of a respiratory protection device with a protection factor greater than the multiple defined in the preceding sentence is inconsistent with the goal specified in § 20.1702 of keeping the total effective dose equivalent ALARA, the licensee may select respiratory protection equipment with a lower protection factor only if such a selection would result in keeping the total effective dose equivalent ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than estimated, the corrected value must be used; if the exposure is later found to be less than estimated, the corrected value may be used.

(2) The licensee shall obtain authorization from the Commission before assigning respiratory protection factors in excess of those specified in Appendix A to Part 20. The Commission may authorize a licensee to use higher protection factors on receipt of an application that—

* * * * *

(d) The licensee shall notify, in writing, the Regional Administrator of the appropriate NRC Regional Office listed in Appendix D to Part 20 at least 30 days before the date that respiratory protection equipment is first used under the provisions of either § 20.1703 (a) or (b).

§ 20.1704 [Amended]

10. The introductory paragraph of § 20.1704 is amended by correcting the reference to ''Appendix A to §§ 20.1001–20.2401'' to read ''Appendix A to Part 20.''

§ 20.1902 [Amended]

11. In § 20.1902, paragraph (e) is amended by correcting the reference to ''Appendix C to §§ 20.1001–20.2401'' to read ''Appendix C to Part 20.''

§ 20.1905 [Amended]

12. In § 20.1905, paragraph (a) is amended by correcting the reference to ''Appendix C to §§ 20.1001–20.2401'' to read ''Appendix C to Part 20'' and paragraph (b) is amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.1906 [Amended]

13. In § 20.1906, paragraph (c) is amended by deleting the word ''practicable'' and replacing it with the word ''practical,'' and the introductory text of paragraph (d) is amended by correcting the reference to ''Appendix D to §§ 20.1001–20.2401'' to read ''Appendix D to Part 20.''

§ 20.2003 [Amended]

14. In § 20.2003, paragraphs (a)(2) and (a)(3)(i) are amended by correcting the reference to ''Appendix B to §§ 20.1001–20.2401'' to read ''Appendix B to Part 20.''

§ 20.2006 [Amended]

15. In § 20.2006, paragraphs (a), (b), (c), and (d) are amended by correcting the reference to ''Appendix F to §§ 20.1001–20.2401'' to read ''Appendix F to Part 20.''

16. In § 20.2103, paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) are revised to read as follows:

§ 20.2103 Records of surveys.

* * * * *

(b) * * *

(1) Records of the results of surveys to determine the dose from external sources and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents. This includes those records of results of surveys to determine the dose from external sources and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents required under the

standards for protection against radiation in effect prior to January 1, 1994; and

(2) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose. This includes those records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose required under the standards for protection against radiation in effect prior to January 1, 1994; and

(3) Records showing the results of air sampling, surveys, and bioassays required pursuant to § 20.1703(a)(3) (i) and (ii). This includes those records showing the results of air sampling, surveys, and bioassays required under the standards for protection against radiation in effect prior to January 1, 1994; and

(4) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment. This includes those records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment required under the standards for protection against radiation in effect prior to January 1, 1994.

17. In § 20.2104, paragraph (f) is revised to read as follows:

§ 20.2104 Determination of prior occupational dose.

* * * * *

(f) The licensee shall retain the records on NRC Form 4 or equivalent until the Commission terminates each pertinent license requiring this record. The licensee shall retain records used in preparing NRC Form 4 for 3 years after the record is made. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

18. In § 20.2106, paragraph (f) is revised to read as follows:

§ 20.2106 Records of individual monitoring results.

* * * * *

(f) The licensee shall retain the required form or record until the Commission terminates each pertinent license requiring this record. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

19. In § 20.2108, paragraph (b) is revised to read as follows:

§ 20.2108 Records of waste disposal.

* * * * *

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring this record. This includes records required under the standards for protection against radiation in effect prior to January 1, 1994.

§ 20.2201 [Amended]

20. In § 20.2201, paragraphs (a)(1) (i) and (ii), are amended by correcting the reference to ''Appendix C to §§ 20.1001–20.2401'' to read ''Appendix C to Part 20,'' and paragraph (b)(2)(ii) is amended by correcting the reference to ''Appendix D to §§ 20.1001–20.2401'' to read ''Appendix D to Part 20.''

§ 20.2203 [Amended]

21. In § 20.2203, paragraph (d) is amended by correcting the reference to ''Appendix D to §§ 20.1001–20.2401'' to read ''Appendix D to Part 20.''

§ 20.2204 [Amended]

22. Section 20.2204 is amended by correcting the reference to ''Appendix D to §§ 20.1001–20.2401'' to read ''Appendix D to Part 20.''

23. In Appendix C, the quantity for Carbon-14 is revised to read as follows:

Appendix C to Part 20—Quantities of Licensed Material Requiring Labeling

* * * * *

APPENDIX C TO PART 20—QUANTITIES OF LICENSED MATERIAL REQUIRING LABELING

Radionuclide	Quantity (μCi)
Carbon-14	100

* * * * *

Appendix F to part 20 [Amended]

24. In Appendix F, paragraph I, Manifest is amended by deleting the word ''practicable'' and replacing it with the word ''practical,'' and paragraphs III(A)(7), (B)(5), (C)(8), and (D)(2) are revised to read as follows:

III. Control and Tracking

(A) * * *

(7) Retain a copy of the manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by parts 30, 40, and 70 of this chapter. This includes those manifests and documents required under the standards for protection against radiation in effect prior to January 1, 1994; and

* * * * *

(B) * * *

(5) Retain a copy of the manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by parts 30, 40, and 70 of this chapter, and retain information from generator manifest until the license is terminated. This includes those manifests and documents of acknowledgement of receipt required under the standards for protection against radiation in effect prior to January 1, 1994; and

* * * * *

(C) * * *

(8) Retain copies of original manifests and new manifests and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by parts 30, 40, and 70 of this chapter. This includes those manifests and documents of acknowledgement of receipt required under the standards for protection against radiation in effect prior to January 1, 1994; and

* * * * *

(D) * * *

(2) Maintain copies of all completed manifests or equivalent documentation until the license is terminated. This includes those manifests or equivalent documents required under the standards for protection against radiation in effect prior to January 1, 1994; and

* * * * *

Dated at Rockville, Maryland, this 11th day of April 1995.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Acting Executive Director for Operations.

[FR Doc. 95–10123 Filed 4–24–95; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0851]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a regulatory ''safe harbor'' from the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the Board's Regulation Y. The safe harbor permits any bank or nonbank subsidiary of a bank holding company to offer a ''combined-balance discount''—that is, a discount based on a customer maintaining a combined minimum

balance in products specified by the company offering the discount.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel (202/452–3236), or David S. Simon, Attorney (202/452–3611), Legal Division; or Anthony Cyrnak, Economist, (202/452–2917), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying a product or service to another product or service offered by the bank or by any of its affiliates.[1] A bank engages in a tie for purposes of section 106 by conditioning the availability of, or offering a discount on, one product or service (the ''tying product'') on the condition that the customer obtain some additional product or service (the ''tied product'') from the bank or from any of its affiliates. Violations of section 106 can be addressed by the Board through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other party through an action for damages. 12 U.S.C. 1972, 1973, and 1975.

Section 106 contains an explicit exception (the ''statutory traditional bank product exception'') that permits a bank to tie a product or service to a loan, discount, deposit, or trust service offered by that bank. The Board has extended this exception by providing that a bank or any of its affiliates also may vary the consideration for a traditional bank product on condition that the customer obtain another traditional bank product from an affiliate (the ''regulatory traditional bank product exception'').[2]

Section 106 authorizes the Board to grant exceptions to its restrictions by regulation or order. On October 19, 1994, the Board issued an order permitting the subsidiary banks of Fleet Financial Group, Inc., Providence, Rhode Island (Fleet) to offer a discount on the monthly service fee charged for its ''Fleet One Account'' to customers who maintain a combined minimum balance of at least $10,000 in one or more products selected from a menu of eligible Fleet products. All products offered as part of this arrangement were separately available to customers at competitive prices. In granting Fleet's request, the Board determined that, to the extent that Fleet's combined-balance discount was prohibited by section 106, an exemption was warranted given the public benefits and absence of anti-competitive concerns generated by the arrangement.

Final Rule

On October 21, 1994, the Board proposed a regulatory safe harbor from section 106 for combined-balance discounts similar to that offered by Fleet (59 FR 53761, October 26, 1994). The proposal would have permitted any bank to offer a combined-balance discount provided that (1) the bank offered deposits, (2) all such deposits were considered in the arrangement, and (3) all balances in products eligible to be contributed to the minimum balance counted equally towards the minimum balance. In addition, all products involved in the arrangement were required to be separately available for purchase. The Board proposed the safe harbor to provide certainty as to the general permissibility of combined-balance discounts similar to that proposed by Fleet, and because it believed that such discounts are pro-consumer and not anti-competitive.

As noted above, the proposal included a requirement that all deposits count toward the minimum balance. The Board was concerned that absent such a requirement, combined-balance discount plans could be constructed so that a non-traditional bank product, such as securities brokerage services, represented the only viable option for a customer to reach the minimum balance. Under the Board's proposal, a customer could have qualified for the discount based solely on deposit balances. Therefore, there would be no incentive for a customer to establish a securities brokerage account, or any other non-traditional bank product, that the customer did not want in order to obtain the discount.[3]

Summary of Comments

The Board received 58 comments on its proposal. Those commenting included 42 banking organizations, seven trade associations representing the banking industry, six Reserve Banks, two thrifts, and one law firm representing numerous insurance trade associations. Commenters overwhelmingly supported the Board's proposal because they believed that it would provide benefits to both consumers and banks.[4] Commenters stated that the proposal would provide customers increased opportunities to obtain services from a bank at discounted prices based on the customer's overall relationship with the bank by allowing customers to meet combined-balance requirements through non-traditional products as well as traditional bank products.

Commenters also supported the proposed safe harbor because it would permit banks to market products more efficiently and compete more effectively with their nonbanking competitors who currently offer combined-balance discount arrangements. In addition, commenters commended the Board for recognizing that the financial services industry is evolving as banks provide customers a broader range of financial services. The proposed safe harbor would permit banks to package these products and therefore attract and retain more customers.

A few commenters suggested modifications to the Board's proposal and recommended that the safe harbor be enlarged. First, six commenters objected to the requirement that the bank offering the discount also offer deposits because this would prevent a nonbank subsidiary of a bank holding company—for example, a trust company—from offering the type of combined-balance discount proposed by the Board.[5] Commenters believed that customers could be protected from any anti-competitive effects so long as an affiliated bank offered deposits and those deposits count towards the minimum balance.

[1] Although section 106 applies only when a bank offers the tying product, the Board in 1971 extended the same restrictions to bank holding companies and their nonbank subsidiaries. See 12 CFR 225.7(a).

[2] See 12 CFR 225.7(b)(2).

[3] The Board also noted that, under the statutory and regulatory traditional bank product exceptions, a bank already could offer a combined-balance discount where all products in an arrangement were traditional bank products. The proposed safe harbor would simply permit a bank to increase customer choice by adding a customer's securities brokerage account or other non-traditional products to the menu of traditional bank products that count toward the minimum balance.

[4] One commenter continued to oppose blanket exceptions to section 106, recommending that the Board act on exemption requests on a case-by-case basis. As noted below, the Board believes that a safe harbor can be designed narrowly enough to prevent anti-competitive effects.

[5] Under the Board's Rules, a nonbank subsidiary of a bank holding company could offer a combined-balance discount involving products offered by the company and its nonbank affiliates so long as no bank was involved in the arrangement. See 12 CFR 225.7(b)(3). Because combined-balance discount arrangements under this proposal include products and services offered by banks and nonbanks, a further exception is required.

Second, thirteen commenters sought modification to the requirement that all deposits be eligible products (that is, count toward the combined minimum balance). Commenters argued that deposits should not be distinguished from other traditional bank products and that therefore the safe harbor should include plans where, for example, loans are among the eligible products but deposits are not. Commenters also argued that requiring all deposits at a bank to be counted as eligible products was unnecessary and burdensome, and that a requirement that a ''substantial majority'' or ''all types'' of deposits would serve to prevent anti-competitive arrangements.

Finally, eight commenters objected to the requirement that all eligible products count equally toward the minimum balance, arguing that different products impose different costs on banks and that a company should be able to weight the products in an economically rational way.[6]

Consideration of Comments

The Board agrees with the commenters that customers should be able to count deposits at an affiliated bank toward a minimum balance, and thus that a trust company, for example, should be able to offer a combined-balance discount arrangement that includes deposits at its affiliated bank. Accordingly, the final rule has been modified so that a combined-balance discount arrangement involving products from banks and nonbanks also may be offered by a nonbank subsidiary of a bank holding company so long as a customer may use deposit balances at an affiliated bank to reach the minimum balance required to obtain the discount. This modification assumes that the affiliated bank offering the eligible deposits is reasonably accessible to the customer.

As noted above, the Board proposed the requirement that a bank include deposits among the eligible products in order to ensure that any exempt combined-balance discount would offer customers meaningful choices and therefore could not have an anti-competitive effect. Loans, discounts, or trust services—the other ''traditional bank products'' that commenters suggested should be able to replace deposits in a combined-balance arrangement—may not be so viable a choice for many customers. While the Board believes that deposits should in almost every case be an attractive option, a large trust account or mortgage loan may be a realistic option for only a small percentage of customers. Without deposits as eligible products, customers who are not eligible for a large trust account or mortgage loan may effectively be required to elect another, non-traditional, product in order to obtain the combined-balance discount. Thus, the Board is maintaining a deposit requirement for combined-discount plans that fall under this safe harbor.[7] For similar reasons, the Board is not adopting the suggestion by commenters that only some deposits be required to count toward the minimum balance, simply because it is impossible to predict the effect of this more malleable standard.

The Board recognizes, however, that discount arrangements other than those within the safe harbor may also be consistent with the purposes of section 106. The Board will continue to consider such plans on a case-by-case basis and is delegating authority to approve such plans to the General Counsel. The Board will also, in appropriate cases, expand the safe harbor by rule.

The Board shares commenters' concerns that the proposal would prevent banks from assigning products different weights in counting them toward the minimum balance, and thereby could force banks to price their products irrationally. Commenters stressed that some products are more profitable than others, and that different weights should be assigned accordingly. Although there is a concern that weighting could be used to require purchase of certain non-traditional products, the Board believes this concern can be addressed by the narrower requirement that any deposit included in a combined-balance discount arrangement count at least as much toward the minimum balance as any non-deposit. This approach, which was suggested by several commenters, will allow companies to assign different weights among deposits and non-deposits.[8]

One commenter argued that combined-balance discounts do not violate section 106 when a multiplicity of options that includes traditional bank products means that there is no ''condition or requirement'' that the customer purchase a non-traditional bank product. However, the commenter acknowledged that a bank could effectively tie through differential pricing. In order to address this possibility, the commenter favored general language providing that combined-balance discounts generally are not covered by section 106 so long as all eligible products are ''meaningful alternatives.'' The commenter urged the Board to adopt this reading as an interpretation, in lieu of a safe harbor.

As discussed in the preamble to the proposed rule, section 106 covers any condition or requirement that a customer purchase ''some additional product,'' which would appear to include combined-balance discounts. The statutory and regulatory traditional bank product exceptions would clearly exempt combined-balance discounts where all eligible products are traditional bank products. However, the question is whether, when both traditional and non-traditional bank products are included in the list of eligible products: (1) The transaction continues to be covered, does not qualify for the traditional bank product exceptions, and therefore requires an exemption, or (2) the transaction is not covered by section 106 because it is possible for a customer to meet the minimum balance through traditional products. The commenter urges the Board to adopt the second interpretation with the added requirement that the choice of traditional products be ''meaningful.''

The Board sees no need to resolve this issue in prescribing the final rule, as any interpretation would not be binding and the need for the safe harbor would be the same in either case. Even under the second interpretation, there would remain confusion about what constitutes sufficiently ''meaningful'' choice among traditional bank products so that a combined-balance discount is not covered by section 106.

Related Issue

As in past rulemakings in the tying area, the Board has received numerous comments recommending that the Board repeal its extension of section 106 to bank holding companies and their

[6] One commenter representing the insurance industry indicated that the inclusion of certain insurance products in a combined-balance discount arrangement may undermine or perhaps contradict state insurance laws which generally prohibit insurance agents from varying the consideration charged for insurance products. The Board's regulation is not intended to, and does not, exempt any arrangements from state or federal law. Companies offering combined-balance discount arrangements are responsible for ensuring that these arrangements comply with all applicable state and federal restrictions.

[7] The Board also is retaining the requirement that all products involved in a combined-balance discount arrangement are separately available for purchase.

[8] For example, a bank could count toward the minimum balance 100 percent of demand deposits, 80 percent of certificates of deposit, 70 percent of mutual fund shares, and 60 percent of stock held in a brokerage account. So long as the percentages assigned to all deposits are higher than the percentages assigned to the non-deposits, the safe harbor would apply.

nonbank subsidiaries. These comments argue that section 106, by its terms, only applies to banks and the Board's extension of these restrictions places bank holding companies and their nonbank subsidiaries at a competitive disadvantage. These commenters emphasize that, even without these restrictions, bank holding companies and their nonbank subsidiaries remain subject to the antitrust laws. The Board has this matter under consideration and has asked staff to analyze whether additional steps should be taken.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the final rule.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In section 225.7, a new paragraph (b)(4) is added to read as follows:

§ 225.7 Tying restrictions.

* * * * *

(b) * * *

(4) *Safe harbor for combined-balance discounts.* A bank holding company or any bank or nonbank subsidiary thereof may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(i) That company (if it is a bank) or a bank affiliate of that company (if it is not a bank) offers deposits, and all such deposits are eligible products; and

(ii) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 19, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–10120 Filed 4–24–95; 8:45am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–38; Amendment 39–9206, AD 95–09–02]

Airworthiness Directives; AlliedSignal Engines (Formerly Textron Lycoming) LTS101 Series Turboshaft and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AlliedSignal Engines (formerly Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines. This action supersedes priority letter AD 94–19–01 that currently requires initial and repetitive inspections for wear of the engine fuel pump internal drive splines, and replacement of engine fuel pumps that exhibit wear beyond specified limits. This action clarifies the original requirements of the current AD by providing additional information to emphasize that the AD only applies to engines installed on single-engine aircraft and to emphasize that removed fuel pumps must be returned to the manufacturer for inspection. In addition, this action defines a serviceable part. This amendment is prompted by requests to clarify interpretations of the current priority letter AD. The actions specified by this AD are intended to prevent engine fuel pump failure, which can result in total engine power loss and possible loss of the aircraft.

DATES: Effective May 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1995.

Comments for inclusion in the Rules Docket must be received on or before June 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–38, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497; telephone (203) 385–2000. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On September 2, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94–19–01, applicable to Textron Lycoming LTS101 series turboshaft and LTP101 series turboprop engines, which requires initial and repetitive inspections for wear of the engine fuel pump internal drive splines, and replacement of engine fuel pumps that exhibit wear beyond the limits specified in Textron Lycoming Service Bulletin (SB) No. LT101–73–20–0165, dated September 1, 1994, with a serviceable part. Fuel pumps removed in accordance with that AD must be returned to Chandler Evans (CECO) for disassembly, inspection and repair. That action was prompted by a report of a helicopter accident that resulted in a total loss of engine power and subsequent autorotation of a helicopter powered by a Textron Lycoming Model LTS101–600A–3 turboshaft engine. Investigation of that accident and other recent engine failures found that CECO Model MFP261 engine fuel pump internal drive spline teeth were worn away and failed to engage, resulting in loss of fuel delivery to the engine. The wear progressed to failure prior to the specified overhaul interval of 2,400 hours time in service (TIS). The FAA has determined that the present engine fuel pump overhaul interval is insufficient to prevent excessive wear of internal drive splines during service. That condition, if not corrected, could result in engine fuel pump failure, which can result in total engine power loss and possible loss of the aircraft.

Since issuance of that priority letter AD, on October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming. In addition, the FAA has approved the technical contents of AlliedSignal Engines Service Bulletin (SB) No. LT101–73–20–0165, Revision 1, dated January 3, 1995, that adds fuel pump Part Number 4–301–128–09 to the SB's effectivity. The FAA has accordingly revised the applicability of this AD to include that additional part number.

In addition, the FAA has received requests to clarify interpretations of the current priority letter AD. To begin, this AD is applicable to single-engine aircraft only. Although other AlliedSignal Engines LTS101 and LTP101 engine models, installed on multi-engine aircraft, use the same fuel pump internal spline design, the FAA has not determined that those other engine models face the same unsafe condition. Should unsafe conditions develop in the future on other engine models that incorporate fuel pumps with internal spline designs, the FAA may consider additional AD actions. This finding has been coordinated with the Small Aircraft and the Rotorcraft Directorates.

Second, the FAA has determined that the removed fuel pumps must be returned to CECO due to CECO's specialized disassembly and inspection capabilities. The manufacturer must also obtain data necessary to further define the fuel pump failure characteristics, and to develop design modifications to correct the unsafe condition.

Finally, for the purpose of this AD, a serviceable part is defined as a new part, or a part that has been inspected by CECO in accordance with AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, and that has not yet accumulated 900 hours time in service (TIS) since new, or since inspection by CECO.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 94–19–01 to require initial and repetitive inspections for wear of the engine fuel pump internal drive splines, and replacement of engine fuel pumps that exhibit wear beyond the limits specified in AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, with a serviceable part. Fuel pumps removed in accordance with this AD must be returned to CECO for disassembly, inspection and repair. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–38.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–09–02 AlliedSignal Engines: Amendment 39–9206. Docket No. 94–ANE–38.

Applicability: AlliedSignal Engines (formerly Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines incorporating Chandler Evans (CECO) engine fuel pumps, Part Numbers 4–301–128–01, –02, –03, –04, –05, –06, –07, –08, –09, and –10. These engines are installed on but not limited to the following single-engine aircraft: Eurocopter France (formerly Aerospatiale) AS350D series helicopters and Airtractor AT302, PAC Aero Cresco, and Page (Ayres S–2R) Thrush airplanes. This AD is not applicable to engines installed on twin-engine aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine fuel pump failure, which can result in total engine power loss and possible loss of the aircraft, remove CECO engine fuel pumps, return to CECO for inspection, and replace with a serviceable part, in accordance with the following schedule:

(a) Remove from service CECO engine fuel pumps with greater than 1,300 hours time in service (TIS) since new or overhaul on the effective date of this airworthiness directive (AD), within the next 100 hours TIS after the effective date of this AD, in accordance with AlliedSignal Engines Service Bulletin (SB) No. LT101–73–20–0165, Revision 1, dated January 3, 1995, or previous revision.

(b) Remove from service CECO engine fuel pumps with greater than 850 hours TIS but less than or equal to 1,300 hours TIS since new or overhaul on the effective date of this AD, within the next 150 hours TIS after the effective date of this AD, in accordance with AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, or previous revision.

(c) Remove from service CECO engine fuel pumps with less than or equal to 850 hours TIS since new or overhaul on the effective date of this AD, within the next 300 hours TIS after the effective date of this AD, or prior to accumulating 1,000 hours TIS since new or overhaul, whichever occurs first, in accordance with AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, or previous revision.

(d) Thereafter, remove from service CECO engine fuel pump at intervals not to exceed 900 hours TIS since the last inspection in accordance with the Accomplishment Instructions of AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, or previous revision.

(e) Engine fuel pumps that exhibit wear beyond the limits specified in AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, or previous revision, may not be returned to service.

(f) For the purpose of this AD, a serviceable part is defined as a new part, or a part that has been inspected by CECO in accordance with AlliedSignal Engines SB No. LT101–73–20–0165, Revision 1, dated January 3, 1995, or previous revision, and that has not yet accumulated 900 hours TIS since new, or since inspection by CECO.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(i) The actions required by this AD shall be done in accordance with the following service bulletin:

Document No.	Revision	Pages	Date
AlliedSignal Engines SB No. LT101–73–20–0165 ..... Total Pages: 3.	1	1–3	January 3, 1995.
Chandler Evans SB No. 73–13 ..... Total Pages: 5.	1	1–5	January 3, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497; telephone (203) 385–2000. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment supersedes priority letter AD 94–19–01, issued September 2, 1994.

(k) This amendment becomes effective on May 10, 1995.

Issued in Burlington, Massachusetts, on April 17, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–10134 Filed 4–21–95; 11:19 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–026]

Michigan State Plan: Approval of Revised Compliance Staffing Benchmarks

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final Rule: approval of revised State compliance staffing benchmarks.

SUMMARY: This document amends agency regulations to reflect the Assistant Secretary's decision to approve revised compliance staffing benchmarks for the Michigan State plan.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637. 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (''the Act,'' 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may be so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have ''* * * the qualified personnel necessary for the enforcement of * * * standards,'' 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia *(AFL–CIO* v. *Marshall,* C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a ''fully effective'' enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish ''fully effective'' compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a *Report to the Court* containing these benchmarks and requiring Michigan to allocate 141 safety and 225 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent

revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 *Report to the Court* explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. The State of Michigan participated in this benchmark revision process, which resulted in a methodology whereby a State could submit data that would justify revision of its 1980 benchmarks. In 1992, Michigan proposed to the Assistant Secretary revised compliance staffing levels for a ''fully effective'' program responsive to the occupational safety and health needs of the State. (A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

Proposed Revision of Benchmarks

In 1980, OSHA submitted a report to the Court containing the benchmarks and requiring Michigan to allocate 141 safety compliance officers and 225 industrial hygienists. Pursuant to the initiative begun in August 1983 by the State plan designees as a group, and in accord with the formula and general principles established by that group for individual State revision of benchmarks, Michigan reassessed the compliance staffing necessary for a ''fully effective'' occupational safety and health program in the State.

In 1992, the Michigan Department of Labor (the designated agency or ''designee'' for safety enforcement in the State) and the Michigan Department of Public Health (the designated agency or ''designee'' for health enforcement in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for Michigan in 1980. This reassessment resulted in a proposal to OSHA of revised compliance staffing benchmarks of 56 safety and 45 health compliance officers for the State of Michigan.

History of the Present Proceedings

On March 29, 1994, the Occupational Safety and Health Administration published notice in the **Federal Register** of its proposal to approve revised compliance staffing benchmarks for Michigan (59 FR 14586). A detailed description of the methodology and State-specific information used to develop the revised compliance staffing levels for Michigan was included in the notice. In addition, OSHA submitted, as a part of the record, detailed submissions containing both narrative explanation and supporting data for Michigan's proposed revised benchmarks (Docket No. T–026). An informational record was established in a separate docket (Docket No. T–018) and contains background information relevant to the benchmark issue and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process, a copy of Michigan's complete record was maintained in the OSHA Docket Office in Washington, DC. Copies of Michigan's record were also maintained in the OSHA Region V Office in Chicago, Illinois, and in the offices of the Michigan Department of Labor and the Michigan Department of Public Health in Lansing, Michigan.

The March 29 proposal invited interested parties to submit, by May 3, 1994, written comments and views regarding whether Michigan's proposed revised compliance staffing benchmark levels should be approved. One comment was received regarding Michigan's proposed benchmarks.

Summary and Evaluation of Comments Received

In response to the March 29 **Federal Register** notice for Michigan, OSHA received one comment from Paul M. Schubert of Akron, Ohio (Exhibit 4–1). Douglas J. Kalinowski, Chief of the Michigan Division of Occupational Health, responded to the public comment (Exhibit 4–2).

Mr. Schubert commented that he had been a health compliance officer with the Michigan Department of Public Health from 1975 through 1981, and that it was his opinion, based on his experience as a compliance officer, that the complexity of many of the health compliance inspections would require more than the State's historical average of 27.8 hours per health compliance inspection. Mr. Schubert also noted that during one of his years as a compliance officer his inspections had averaged 210 hours per inspection.

In his response, Mr. Kalinowski noted that the annual number of hours available for compliance activity per Michigan health compliance officer is 1,462 hours. If each health inspection required an average of 210 hours, fewer than seven inspections would be conducted per compliance officer. According to Mr. Kalinowski, 31.5 health inspectors conducted a total of 1,766 health inspections in 1980, with an average of 56 inspections per health inspector and an average of 26 hours per inspection. In its 1992 submission proposing revised compliance staffing benchmarks, Michigan utilized actual inspection activity data for Fiscal Years 1990 and 1991 to determine that the average health inspection required approximately 27.8 hours. Michigan's data was comparable to the national average number of hours per health inspection for all 18(b) State plans of 24 in Fiscal Year 1990 and 25 in Fiscal Year 1991. It is OSHA's determination that the State's use of the average of 27.8 hours per health inspection is reasonable and acceptable.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings. In light of all the facts presented on the record, including all comments received thereon, the Assistant Secretary has determined that the revised compliance staffing levels proposed for Michigan meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers for a ''fully effective'' enforcement program. Therefore, the revised compliance staffing levels of 56 safety and 45 health for Michigan are approved.

Effect of Decision

The approval of the revised staffing levels for Michigan, set forth elsewhere in this notice, establishes the requirement for a sufficient number of adequately trained and qualified compliance personnel as set forth in Section 18(c) of the Act and 29 CFR 1902.37(b)(1). These benchmarks are established pursuant to the 1978 Court Order in *AFL–CIO* v. *Marshall* and define the compliance staffing levels necessary for a ''fully effective'' program in Michigan. The allocation of sufficient staffing to meet the benchmarks is one of the conditions necessary for States to receive an 18(e) determination (final State plan approval) with its resultant relinquishment of concurrent Federal enforcement jurisdiction.

Explanation of Changes to 29 CFR Part 1952

29 CFR 1952 contains, for each State having an approved occupational safety and health plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. This notice makes several changes to Subpart T to reflect the approval of Michigan's revised compliance staffing benchmarks, as well as to reflect minor editorial modifications to the structure of the Subpart.

A new § 1952.393, *Compliance staffing benchmarks,* has been added to Subpart T to reflect the approval of the revised benchmarks for Michigan.

While most of the existing subparts have been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps and certification of completion of developmental steps) are set forth in chronological order.

Related editorial changes to the subparts include modification of the heading of § 1952.260 to clearly identify the initial plan approval of Michigan. The addresses of locations where the Michigan plan may be inspected have been updated and are found at § 1952.266.

Regulatory Flexibility Act

OSHA certifies, pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*), that this rulemaking will not have significant economic impact on a substantial number of small entities. Approval of the revised compliance staffing benchmarks for Michigan will not place small employers in the State under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033))

Signed at Washington, DC, this 20th day of April 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1952—[AMENDED]

Accordingly, Subpart T of 29 CFR Part 1952 is amended to read as follows:

Subpart T—Michigan

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Section 1952.260 is amended by revising the heading to read:

§ 1952.260 Description of the plan as initially approved.

§ 1952.265 [Redesignated as § 1952.267]

§ 1952.262 [Redesignated as § 1952.265]

3. Section 1952.265 is redesignated as § 1952.267, and § 1952.262 is redesignated as § 1952.265.

§ 1952.264 [Redesignated as § 1952.262]

4. Section 1952.264 is redesignated as § 1952.262, and is amended by revising the heading to read:

§ 1952.262 Completion of developmental steps and certification.

§ 1952.264 [Reserved]

5. A new § 1952.264 is added and reserved.

§ 1952.261 [Redesignated as § 1952.266]

6. Section 1952.261 is redesignated as § 1952.266 and revised to read as follows:

§ 1952.266 Where the plan may be inspected

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604; Michigan Department of Labor, Victor Office Center, 201 North Washington Square, Lansing, Michigan 48933; and Michigan Department of Public Health, 3423 North Logan Street, Lansing, Michigan 48909

§ 1952.261 [Redesignated from § 1952.263]

7. Section 1952.263 is redesignated as § 1952.261 and a new § 1952.263 is added to read as follows:

§ 1952.263 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (''benchmarks'') necessary for a ''fully effective'' enforcement program were required for each State operating an approved State plan. In 1992, Michigan completed, in conjunction with OSHA, a reassessment of the levels initially established in 1980 and proposed revised benchmarks of 56 safety and 45 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on April 20, 1995.

8. Newly designated § 1952.261 is amended by revising the heading to read:

§ 1952.261 Developmental schedule.

§ 1952.261 [Amended]

9. Newly designated § 1952.261(i) is further redesignated as § 1952.262(i).

[FR Doc. 95–10138 Filed 4–24–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Navajo Nation Abandoned Mine Land Reclamation (AMLR) Plan

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 Navajo Nation AMLR plan (hereinafter referred to as the ''Navajo plan'') under the Surface Mining Control Reclamation Act of 1977 (SMCRA). The Navajo Nation proposed revisions to its AMLR Code of 1987 pertaining to the reclamation of interim program coal sites. The amendment is intended to revise the Navajo plan to be consistent with SMCRA, and to improve operational efficiency.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Generally, lands and waters eligible for reclamation under Title IV are those that are mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibilities under State, Federal, Tribal, or other laws. Lands and waters abandoned or inadequately reclaimed after August 3, 1977, are also eligible for reclamation under provisions at sections 402(g)(4) and 404 of SMCRA.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The

Secretary of the Interior adopted regulations at 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribal program. Approval granted the State or Tribe exclusive authority to administer its plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100–71) that authorized the Crow and Hopi Tribes and Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State or Tribal plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR Part 886.

II. Background on the Navajo Plan

On May 16, 1988, the Secretary of the Interior approved the Navajo plan. General background information on the Navajo plan, including the Secretary's findings, the disposition of comments, and the approval of the Navajo plan can be found in the May 16, 1988, **Federal Register** (53 FR 17186). Approval of the Navajo plan is codified at 30 CFR 756.13. Subsequent actions concerning the Navajo plan and plan amendments can be found at 30 CFR 756.14.

III. Proposed Amendment

By letter dated January 12, 1995, the Navajo Nation submitted a proposed amendment to its AMLR plan pursuant to SMCRA (administrative record No. NA–227). The Navajo Nation submitted the proposed amendment at its own initiative and in response to the final rule **Federal Register** notice acknowledging that the Navajo Nation would amend its AMLR Code of 1987 to provide for the reclamation of interim program coal sites (59 FR 49178, 48181, finding No. 1(f), September 27, 1994; administrative record No. NA–225). The Navajo Nation proposed the addition of new language at section 404(b) of its AMLR Code to provide for such reclamation.

OSM announced receipt of the proposed amendment in the February 10, 1995, **Federal Register** (60 FR 7926), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NA–232). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 10, 1995.

During its review of the proposed amendment, OSM identified concerns relating to the provisions of the Navajo AMLR Code of 1987 at section 404(b)(2) pertaining to the dates used to define interim program coal sites, and the lack of a provision requiring a determination that there are insufficient funds to provide for adequate reclamation or abatement at the site. OSM notified the Navajo Nation of the concerns in a telephone conversation of February 23, 1995 (administrative record No. NA–233).

The Navajo Nation responded in a letter dated February 23, 1995, by submitting a revised amendment (administrative record No. NA–234). Based upon the revisions to the proposed plan amendment submitted by the Navajo Nation, OSM reopened the public comment period in the March 10, 1995, **Federal Register** (60 FR 13086, administrative record No. NA–236). The public comment period ended on March 27, 1995.

IV. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed Navajo plan amendment as submitted by the Navajo Nation on January 12, 1995, and as revised by it on February 23, 1995, is not inconsistent with SMCRA and is in compliance with the corresponding Federal regulations at 30 CFR 884.14 and 884.15. Thus, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to the Navajo Nation AMLR Code of 1987

The Navajo Nation proposed to recodify sections 404 (a) and (c), eligible lands and water, of its AMLR Code of 1987, (corresponding provisions at section 404 of SMCRA).

Because the recodification of this previously-approved section of the Navajo Nation's AMLR Code is nonsubstantive in nature, the Director finds it is not inconsistent with SMCRA. The Director approved the proposed recodification.

2. Reclamation of Interim Program Coal Sites

The Navajo Nation proposed the addition of provisions at section 404(b) of its AMLR Code to provide for the reclamation of interim program coal sites. Such sites were left in either unreclaimed or inadequately reclaimed condition (1) between August 4, 1977, and September 28, 1984, and the amount of the bond or other financial guarantee is insufficient to provide for adequate reclamation or abatement at the site, or (2) where the mining occurred between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any other source were insufficient to provide adequate reclamation or abatement at the site. In addition, to qualify for reclamation or abatement, such sites must be either priority 1 or 2 sites pursuant to section 403(a) (1) and (2) of SMCRA, and priority will be given to those sites in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

Proposed section 404(b) of the Navajo Nation AMLR Code contains the same requirements as the counterpart Federal requirements at section 402(g)(4) of SMCRA. Therefore, the Director finds that the proposed AMLR Code provisions are consistent with the counterpart SMCRA provisions. The Director approves proposed section 404(b) of the Navajo Nation AMLR Code.

V. 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. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Navajo plan (administrative record Nos. NA–231 and NA–235).

(a) *Arizona State Historic Preservation Officer (SHPO).* On March 13, 1995, the

Arizona SHPO agreed with OSM's determination that no aspects of the proposed amendment pertain to cultural or historic resources (administrative record No. NA–239). As such, the Arizona SHPO determined that the amendment would have no effect on cultural resources under the National Historic Preservation Act of 1966 and 36 CFR part 800.

(b) *Navajo Nation Historic Preservation Department.*

By letter dated February 21, 1995, the Department agreed with OSM's determination that the proposed changes to the Navajo Nation AMLR Code of 1987 do not pertain to cultural resources. Therefore, ti stated that the amendment will have no effect on cultural resources (administrative record No. NA–237).

(c) *U.S. Bureau of Indian Affairs.* The Bureau of Indian Affairs stated in a memorandum dated March 13, 1995, that a technical review had been completed by its Area Real Estate Services, Rights Protection Section, and that it had no comments (administrative record No. NA–238).

VI. Director's Decision

Based on the above findings, the Director approves the Navajo Nation's proposed plan amendment as submitted on January 12, 1995, and as revised on February 23, 1995.

As discussed in finding No. 1, the Director approves nonsubstantive revisions to the Navajo Nation AMLR Code of 1987 at sections 404(a) and (c), eligible lands and water.

As discussed in finding No. 2, the Director approves substantive revisions to the Navajo Nation AMLR Code of 1987 at section 404(b), reclamation of interim program coal sites.

The Director approves the proposed revisions of the Navajo Nation AMLR Code of 1987 with the provision that they be fully promulgated in identical form to the code submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 756, codifying decisions concerning the Navajo plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the Tribal plan amendment process and to encourage Tribes to bring their plans into conformity with the Federal standards without undue delay. Consistency of Tribal and Federal standards is required by SMCRA.

VII. 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 or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribal AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 Tribal submittal which is the subject of this rule is based upon 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 established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 756

Abandoned mine land reclamation program, Indian lands.

Dated: April 19, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

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

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. Section 756.14 is amended by adding paragraph (c) to read as follows:

§ 756.14 Approval of amendments to the Navajo Nation's Abandoned Mine Land Plan.

* * * * *

(c) Revisions to sections 404 (a), (b), and (c) of the Navajo Nation Abandoned Mine Land Reclamation (AMLR) Code of 1987, pertaining to eligible lands and water, as submitted to OSM on January 12, 1995, and as subsequently revised on February 23 1995, are approved effective April 25, 1995.

[FR Doc. 95–10169 Filed 4–24–95; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 3

[Docket No. 950404087–5087–01]

RIN 0651–AA76

Changes To Implement 20-Year Patent Term and Provisional Applications

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 to establish procedures for: filing and processing provisional application papers; calculating the length of any patent term extension to which an applicant is entitled where the issuance of a patent on an application filed on or after June 8, 1995 (the implementation date of the 20-year patent term provisions of the Uruguay Round Agreements Act), other

than for designs, was delayed due to interference proceedings, the imposition of a secrecy order and/or appellate review; and implementing certain transitional provisions contained in the Uruguay Round Agreements Act.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Magdalen Y. Greenlief or John F. Gonzales, Senior Legal Advisors, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, by telephone at (703) 305–9285, by fax at (703) 308–6916 or by mail marked to their attention and addressed to the Commissioner of Patents and Trademarks, Box DAC, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Uruguay Round Agreements Act (Public Law 103–465) was enacted on December 8, 1994. Public Law 103–465 amends 35 U.S.C. 154 to provide that the term of patent protection begins on the date of grant and ends 20 years from the filing date of the application. The amendment applies to all utility and plant patents issued on applications having an actual United States application filing date on or after June 8, 1995. Specifically, 35 U.S.C. 154(a)(2), as contained in Public Law 103–465, provides that the patent term will begin on the date on which the patent issues and will end twenty years from the date on which the application was filed in the United States. If the application contains a specific reference to an earlier application under 35 U.S.C. 120, 121 or 365(c), the patent term will end twenty years from the date on which the earliest application referred to was filed. As amended by Public Law 103–465, 35 U.S.C. 154 does not take into account for determination of the patent term any application on which priority is claimed under 35 U.S.C. 119, 365(a) or 365(b).

Under 35 U.S.C. 154(b)(1), as contained in Public Law 103–465, if the issuance of an original patent is delayed due to interference proceedings under 35 U.S.C. 135(a) or because the application is placed under a secrecy order under 35 U.S.C. 181, the term of the patent shall be extended for the period of delay, but in no case more than five (5) years.

Under 35 U.S.C. 154(b)(2), as contained in Public Law 103–465, if the issuance of a patent is delayed due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than five (5) years. However, a patent shall not be eligible for extension under 35 U.S.C. 154(b)(2) if the patent is subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review.

Under 35 U.S.C. 154(b)(3)(B) and 154(b)(3)(C), as contained in Public Law 103–465, the period of extension under 35 U.S.C. 154(b)(2) shall be reduced by any time attributable to appellate review before the expiration of three (3) years from the filing date of the application and for any period of time during which the applicant for patent did not act with due diligence, as determined by the Commissioner.

Under 35 U.S.C. 154(b)(4), as contained in Public Law 103–465, the total duration of all extensions of a patent under 35 U.S.C. 154(b) shall not exceed five (5) years.

The provisions for patent term extension under 35 U.S.C. 154(b) are separate from and in addition to the patent term extension provisions of 35 U.S.C. 156. The patent term extension provisions of 35 U.S.C. 154(b) are designed to compensate the patent owner for delays in issuing a patent, whereas the patent term extension provisions of 35 U.S.C. 156 are designed to restore term lost to premarket regulatory review after the grant of a patent. In order to prevent a term extension under 35 U.S.C. 154(b) from precluding a term extension under 35 U.S.C. 156, Public Law 103–465 amends 35 U.S.C. 156(a)(2) to specify that the term has never been extended under 35 U.S.C. 156(e)(1).

The 20-year patent term provision is contained in 35 U.S.C. 154, as amended by Public Law 103–465. Section 154 of title 35, United States Code, applies to utility and plant patents, but not to design patents. The term of a design patent is defined in 35 U.S.C. 173 as fourteen (14) years from the date of grant. Therefore, the patent term and patent term extension provisions set forth in 35 U.S.C. 154, as amended by Public Law 103–465, do not apply to patents for designs.

In addition, Public Law 103–465 establishes a domestic priority system. In accordance with the provisions of the Paris Convention for the Protection of Industrial Property, the term of a patent cannot include the Paris Convention priority period. Public Law 103–465 provides a mechanism to enable applicants to quickly and inexpensively file provisional applications. Applicants will be entitled to claim the benefit of priority in a given application based upon a previously filed provisional application in the United States. The domestic priority period will not count in the measurement of the term.

Section 111 of title 35, United States Code, was amended by Public Law 103–465 to provide for the filing of a provisional application on or after June 8, 1995. Section 41(a)(1) of title 35, United States Code, was amended by Public Law 103–465 to provide a $150.00 filing fee for each provisional application, subject to a fifty (50) percent reduction for a small entity. The requirements for obtaining a filing date for a provisional application are the same as those which previously existed for an application filed under 35 U.S.C. 111, except that no claim or claims as set forth in 35 U.S.C. 112, second paragraph, is required. Moreover, no oath/declaration as set forth in 35 U.S.C. 115 is required. The provisional application is also not subject to the provisions of 35 U.S.C. 131, 135 and 157, i.e., a provisional application will not be examined for patentability, placed in interference or made the subject of a statutory invention registration. Further, the provisional application will automatically be abandoned no later than twelve (12) months after its filing date and will not be subject to revival to restore it to pending status beyond a date which is after twelve (12) months from its filing date. A provisional application will not be entitled to claim priority benefits based on any other application under 35 U.S.C. 119, 120, 121 or 365.

Also, Public Law 103–465 amended 35 U.S.C. 119 to allow an applicant to claim the benefit of the filing date of one or more copending provisional applications in a later filed application for patent under 35 U.S.C. 111(a) or 363. The later filed application for patent under 35 U.S.C. 111(a) or 363 must be filed by an inventor or inventors named in the copending provisional application not later than 12 months after the date on which the provisional application was filed and must contain or be amended to contain a specific reference to the provisional application. The provisional application must disclose an invention which is claimed in the application for patent under 35 U.S.C. 111(a) or 363 in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, the provisional application must be pending on the filing date of the application for patent under 35 U.S.C. 111(a) or 363 and the filing fee set forth in subparagaph (A) or (C) of 35 U.S.C. 41(a)(1) must be paid.

Since 35 U.S.C. 154(a)(3), as contained in Public Law 103–465, excludes from the determination of the patent term any application on which priority is claimed under 35 U.S.C. 119,

365(a) or 365(b), the filing date of a provisional application is not considered in determining the term of any patent.

Section 119(e)(1) of title 35, United States Code, provides that if all of the conditions of 35 U.S.C. 119 (e)(1) and (e)(2) are met, an application for patent filed under 35 U.S.C. 111(a) or 363 shall have the same effect as though filed on the date of the provisional application. Thus, the effective United States filing date of an application for patent filed under 35 U.S.C. 111(a), and entitled to benefits under 35 U.S.C. 119(e), is the filing date of the provisional application. Any patent granted on such an application, is prior art under 35 U.S.C. 102(e) as of the filing date of the provisional application.

Likewise, the effective United States filing date of a patent issued on an international application filed under 35 U.S.C. 363, and entitled to benefits under 35 U.S.C. 119(e), is the filing date of the provisional application, except for the purpose of applying that patent as prior art under 35 U.S.C. 102(e). For that purpose only, 35 U.S.C. 102(e) defines the filing date of the international application as the date the requirements of 35 U.S.C. 371 (c)(1), (c)(2) and (c)(4) were fulfilled.

Public Law 103–465 further includes transitional provisions for limited reexamination in certain applications pending for two (2) years or longer as of June 8, 1995, taking into account any reference to any earlier application under 35 U.S.C. 120, 121 or 365(c). The transitional provisions also permit examination of more than one independent and distinct invention in certain applications pending for three (3) years or longer as of June 8, 1995, taking into account any reference to any earlier application under 35 U.S.C. 120, 121 or 365(c). These transitional provisions are not applicable to any application which is filed after June 8, 1995, regardless of whether the application is a continuing application.

The amendments to title 35 relating to 20-year patent term, patent term extension, provisional applications and the transitional provisions are effective on the date which is six (6) months after the date of enactment, i.e., on June 8, 1995.

A Notice of Proposed Rulemaking was published in the **Federal Register** at 59 FR 63951 (December 12, 1994) and in the Patent and Trademark Office Gazette at 1170 Off. Gaz. Pat. Office 377–390 (January 3, 1995).

Forty-nine written comments were received in response to the Notice of Proposed Rulemaking. A public hearing was held at 9:30 a.m. on February 16, 1995. Fourteen individuals offered oral comments at the hearing. The forty-nine written comments and a transcript of the hearing are available for public inspection in the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, Room 520, Crystal Park I, 2011 Crystal Drive, Arlington, Virginia, and are available on the Internet through anonymous file transfer protocol (ftp), address: ftp.uspto.gov.

The following includes a discussion of the rules being added or amended, the reasons for those additions and amendments and an analysis of the comments received in response to the Notice of Proposed Rulemaking.

Changes in text: The final rules contain numerous changes to the text of the rules as proposed for comment. Those changes are discussed below. Familiarity with the Notice of Proposed Rulemaking is assumed.

Section 1.9(a)(1) is being changed for clarity to define a national application as a U.S. application for patent which was either filed in the Office under 35 U.S.C. 111, or which entered the national stage from an international application after compliance with 35 U.S.C. 371. Also, a new paragraph (a)(3) is being added to define the term ''nonprovisional application'' as a U.S. national application for patent which was either filed in the Office under 35 U.S.C. 111(a), or which entered the national stage from an international application after compliance with 35 U.S.C. 371.

The proposed deletion of § 1.60 is being withdrawn. Therefore, § 1.17(i) is being changed to retain the reference to § 1.60.

Section 1.17(q) is being changed to delete the fifty (50) percent reduction for small entities in the $50.00 fee established for filing a petition under § 1.48 in a provisional application and a petition to accord a provisional application a filing date or to convert an application filed under § 1.53(b)(1) to a provisional application.

Sections 1.17(r) and (s) are being changed to include a fifty (50) percent reduction for small entities in the fees established for entry of a submission after final rejection under § 1.129(a) and for each additional invention requested to be examined under § 1.129(b). In the final rule, the fee required by §§ 1.17(r) and 1.17(s) from a small entity is $365.00. The fee required from other than a small entity is $730.00.

The elimination of the small entity reduction in § 1.17(q) and the addition of the small entity reduction in §§ 1.17 (r) and (s) are the result of additional review, which resulted in the conclusion that the fees established for the transitional procedures in §§ 1.129 (a) and (b) may be reduced by fifty (50) percent for small entities. However, the petition fees required by § 1.17(q) are not subject to the fifty (50) percent reduction for small entities.

The proposed deletion of the retention fee practice set forth in former § 1.53(d), now redesignated § 1.53(d)(1), is being withdrawn. Therefore, § 1.21(1) is being retained and amended to refer to § 1.53(d)(1). Also, the proposed change in the text to § 1.17(n) is being withdrawn, since § 1.60 is being retained.

Section 1.28(a) is being changed to clarify the procedure for establishing status as a small entity in a nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application. In such cases, applicants may file a new verified statement or they may rely on a verified statement filed in the prior application, if status as a small entity is still proper and desired. If applicants intend to rely on a verified statement filed in the prior application, applicants must include in the nonprovisional application either a reference to the verified statement filed in the prior application or a copy of the verified statement filed in the prior application. A verified statement in compliance with existing § 1.27 is required to be filed in each provisional application in which it is desired to pay reduced fees.

Section 1.45(c), first sentence, is being changed for clarity to refer to a ''nonprovisional'' application.

Section 1.48 is being changed to include a new paragraph (e) setting forth the procedure for deleting the name of a person who was erroneously named as an inventor in a provisional application. The procedure requires an amendment deleting the name of the person who was erroneously named accompanied by: a petition including a statement of facts verified by the person whose name is being deleted establishing that the error occurred without deceptive intention; the fee set forth in § 1.17(q); and the written consent of any assignee. The first sentences of §§ 1.48 (a)–(c) are also being changed for clarity to refer to a ''nonprovisional'' application.

Section 1.51(a)(2)(i) is being changed to require that the provisional application cover sheet include the residence of each named inventor and, if the invention was made by an agency of the U.S. Government or under a contract with an agency of the U.S. Government, the name of the U.S. Government agency and Government contract number. The residence of each named inventor is information which is

necessary to identify those provisional applications which must be reviewed by the PTO for foreign filing licenses. If the invention disclosed in the provisional application was made by an agency of the U.S. Government or under a contract with an agency of the U.S. Government, the security review for that application should already have been done by that agency of the U.S. Government. Therefore, identification of those particular provisional applications on the cover sheet will reduce the number of applications which the PTO must forward to other agencies of the U.S. Government for security review.

Section 1.53(b)(1) is being changed to retain the reference to § 1.60.

Section 1.53(b)(2)(ii) is being changed to require that any petition and petition fee to convert a § 1.53(b)(1) application to a provisional application be filed in the § 1.53(b)(1) application prior to the earlier of the abandonment of the § 1.53(b)(1) application, the payment of the issue fee, the expiration of twelve (12) months after the filing date of the § 1.53(b)(1) application, or the filing of a request for a statutory invention registration under § 1.293. Where the § 1.53(b)(1) application was abandoned before the expiration of twelve (12) months after the filing date of the application, a petition to convert the application to a provisional application may be filed in the § 1.53(b)(1) application if the petition to convert is filed prior to the expiration of twelve (12) months after the filing date of the § 1.53(b)(1) application and is accompanied by an appropriate petition to revive an abandoned application under § 1.137.

Section 1.53(b)(2)(iii) is being changed to indicate that the requirements of §§ 1.821–1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

Section 1.53(d)(1) is being changed to retain the retention fee practice. The proposal to delete the retention fee practice set forth in § 1.53(d) is being withdrawn.

The first sentences of §§ 1.55 (a) and (b) are being changed for clarity to refer to a ''nonprovisional'' application.

Also, §§ 1.55 (a) and (b) are being changed to clarify that the nonprovisional application may claim the benefit of one or more prior foreign applications or one or more applications for inventor's certificate.

Section 1.59 is being changed to retain the reference to the retention fee set forth in § 1.21(l) and to clarify that the retention fee practice applies only to applications filed under § 1.53(b)(1).

The proposal to delete § 1.60 is being withdrawn. Therefore, § 1.60 is being retained and amended to clarify in the title of the section and in paragraph (b)(1) that the procedure set forth in the section is only available for filing a continuation or divisional application if the prior application was a nonprovisional application and complete as set forth in § 1.51(a)(1). Also, paragraph (b)(4) is being amended to delete the requirement that the statement which must accompany the copy of the prior application include the language that ''no amendments referred to in the oath or declaration filed to complete the prior application introduced new matter therein.'' The requirement is unnecessary because any amendment filed to complete the prior application would be considered a part of the original disclosure of the prior application and, by definition, could not contain new matter. Also, paragraph (b)(4) is being amended to refer to § 1.17(i).

Section 1.62(a) is being changed to refer to a prior complete ''nonprovisional'' application and to clarify that a continuing application may be filed under § 1.62 after payment of the issue fee if a petition under § 1.313(b)(5) is granted in the prior application. Section 1.62(a) is also being changed to clarify the existing practice that the request for a § 1.62 application must include identification of the inventors named in the prior application.

Section 1.63(a) is being changed for clarity to refer to an oath or declaration filed as a part of a ''nonprovisional'' application.

Section 1.67(b) is being changed for clarity to refer to a ''nonprovisional'' application.

Section 1.78 (a)(1) and (a)(2) are being changed to refer to a ''nonprovisional'' application and to clarify that the nonprovisional application may claim the benefit of one or more prior copending nonprovisional applications or international applications designating the United States of America. Section 1.78(a)(1)(ii) is being changed to retain the reference to § 1.60. Section 1.78(a)(1)(iii) is being retained and amended to refer to §§ 1.53(b)(1) and 1.53(d)(1).

Sections 1.78 (a)(3) and (a)(4) are being changed to refer to a ''nonprovisional'' application and to clarify that the nonprovisional application may claim the benefit of one or more prior copending provisional applications.

Section 1.78(a)(3) is also being changed to remind applicants and practitioners that when the last day of pendency of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, any nonprovisional application claiming benefit of the provisional application must be filed prior to the Saturday, Sunday, or Federal holiday within the District of Columbia. Section 111(b)(5) of title 35, United States Code, states that a provisional application is abandoned twelve months after its filing date. Sections 119 (e)(1) and (e)(2) of title 35, United States Code, require that a nonprovisional application claiming benefit of a prior provisional application be filed not later than twelve months after the date on which the provisional application was filed and that the provisional application be pending on the filing date of the nonprovisional application. Under § § 1.6 and 1.10, no filing dates are accorded to applications on a Saturday, Sunday, or Federal holiday within the District of Columbia. Thus, if a provisional application is abandoned by operation of 35 U.S.C. 111(b)(5) on a Saturday, Sunday, or Federal holiday within the District of Columbia, a nonprovisional application claiming benefit of the provisional application under 35 U.S.C. 119(e) must be filed no later than the preceding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.78(a)(4) is also being changed to delete the requirement that the reference in the nonprovisional application to the provisional application indicate the relationship of the applications. As a result of the change, § 1.78(a)(4) provides that a nonprovisional application claiming benefit of one or more provisional applications must contain a reference to each provisional application, identifying it as a provisional application and including the provisional application number (consisting of series code and serial number). However, the section does not require the nonprovisional application to identify the nonprovisional application as a continuation, divisional or continuation-in-part application of the provisional application.

Section 1.83(a) is being changed to delete the proposed redesignation of paragraph (a) and to delete proposed paragraph (a)(2). Also, §§ 1.83 (a) and (c) are being changed for clarity to refer to a ''nonprovisional'' application. Further, § 1.83(c) is being changed to remove the reference to paragraph (a)(1).

Section 1.101 is being changed for clarity to refer to a ''nonprovisional'' application.

Sections 1.129 (a) and (b) are being changed to identify the effective date of 35 U.S.C. 154(a)(2) as June 8, 1995.

Further, § 1.129(a) is being changed to provide that the first and second submissions and fees set forth in § 1.17(r) must be filed prior to the filing of an Appeal Brief, rather than prior to the filing of the Notice of Appeal, and prior to abandonment of the application. The requirement that the fee set forth in § 1.17(r) be filed within one month of the notice refusing entry is being deleted. Section 1.129(a) is also being changed to provide that the finality of the final rejection is automatically withdrawn upon the timely filing of the submission and payment of the fee set forth in § 1.17(r). The language indicating that the submission would be entered and considered after timely payment of the fee set forth in § 1.17(r) ''to the extent that it would have been entered and considered if made prior to final rejection'' is being deleted. In view of the magnitude of the fee set forth in § 1.17(r), the next PTO action following timely payment of the fee set forth in § 1.17(r) will be equivalent to a first action in a continuing application. Under existing PTO practice, it would not be proper to make final a first Office action in a continuing application where the continuing application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised. The identical procedure will apply to examination of a submission considered as a result of the procedure under § 1.129(a). Thus, under § 1.129(a), if the first submission after final rejection was initially denied entry in the application because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised, then the next action in the application will not be made final. Likewise, if the second submission after final rejection was initially denied entry in the application because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised, then the next action in the application will not be made final. In view of 35 U.S.C. 132, no amendment considered as a result of the payment of the fee set forth in § 1.17(r) may introduce new matter into the disclosure of the application.

Section 1.129(b)(1) is being changed to identify the date which is two months prior to the effective date of 35 U.S.C. 154(a)(2) as April 8, 1995. Section 1.129(b)(1) is also being changed to clarify in subsection (ii) that the examiner has not made a requirement for restriction in the present or parent application prior to April 8, 1995, due to actions by the applicant.

Section 1.129(b)(2) is being changed to delete the identification of the period provided for applicants to respond to a notification under § 1.129(b) as one month. The time period for response will be identified in any written notification under § 1.129(b) and will usually be one month, but in no case will it be less than thirty days. The period may be extended under § 1.136(a). The language is also being changed to provide that applicant may respond to the notification by (i) electing the invention or inventions to be searched and examined, if no election has been made prior to the notice, and paying the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects, (ii) confirming an election made prior to the notice and paying the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in addition to the one invention which applicant previously elected, or (iii) filing a petition under § 1.129(b)(2) traversing the requirement without regard to whether the requirement has been made final. No petition fee is required. The section is also being changed to provide that if the petition under § 1.129(b)(2) is filed in a timely manner, the original time period for electing and paying the fee set forth in § 1.17(s) will be deferred and any decision on the petition affirming or modifying the requirement will set a new time period to elect the invention or inventions to be searched and examined and to pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects.

Section 1.129(c) is being changed to clarify that the provisions of §§ 1.129 (a) and (b) are not applicable to any application filed after June 8, 1995. However, any application filed on June 8, 1995 would be subject to a 20-year patent term.

Section 1.137 is being amended by revising paragraph (c) to eliminate, in all applications filed on or after June 8, 1995, except design applications, the requirement that a terminal disclaimer accompany any petition under § 1.137(a) not filed within six (6) months of the date of the abandonment of the application. The language ''filed before June 8, 1995'' and ''filed on or after June 8, 1995'' as used in the amended rule, refer to the actual United States filing date, without reference to any claim for benefit under 35 U.S.C. 120, 121, or 365. No change to § 1.137 was proposed in the Notice of Proposed Rulemaking. However, in all applications filed on or after June 8, 1995, except design applications, any delay in filing a petition under § 1.137(a) will automatically result in the loss of patent term. The loss of patent term will be the incentive for applicants to promptly file any petition to revive. Therefore, no need is seen for requiring a terminal disclaimer in such applications. It would amount to a penalty if a terminal disclaimer was required.

Section 1.136 is being amended by revising paragraph (d) to eliminate, in all applications filed on or after June 8, 1995, except design applications, the requirement that a terminal disclaimer accompany any petition under § 1.316(b) not filed within six (6) months of the date of the abandonment of the application. Acceptance of a late payment of an issue fee in a design application is specifically provided for in § 1.155. Therefore, § 1.316 does not apply to design applications. The language ''filed before June 8, 1995'' as used in the amended rule, refers to the actual United States filing date, without reference to any claim for benefit under 35 U.S.C. 120, 121, or 365. No change to § 1.316 was proposed in the Notice of Proposed Rulemaking. However, in all applications filed on or after June 8, 1995, except design applications, any delay in filing a petition under § 1.316(b) will automatically result in the loss of patent term. The loss of patent term will be the incentive for applicants to promptly file any petition under § 1.316(b). Therefore, no need is seen for requiring a terminal disclaimer in such applications. It would amount to a penalty if a terminal disclaimer was required.

Section 1.317 is being amended by removing and reserving paragraph (d) to eliminate the requirement that a terminal disclaimer accompany any petition under § 1.317(b) not filed within six (6) months of the date of lapse of the patent. No change to § 1.317 was proposed in the Notice of Proposed Rulemaking. However, the delay in filing a petition under § 1.317(b) does not result in any gain of patent term. Therefore, no reason is seen for requiring a terminal disclaimer in such cases.

Section 1.701(a) is being changed to identify the implementation date as June 8, 1995, and to clarify that a proceeding under 35 U.S.C. 135(a) is an interference proceeding.

Section 1.701(b) is being changed to provide that the term of a patent entitled to an extension under § 1.701 shall be extended for the sum of the periods of delay calculated under paragraphs (c)(1), (c)(2), (c)(3) and (d) of § 1.701 and the extension will run from the expiration date of the patent. The reference to a terminal disclaimer is being deleted to be consistent with § 1.701(a)(3) and to avoid any confusion.

Section 1.701(c)(1)(i) is being changed for clarity by deleting the phrase ''if any'' after the first occurrence of ''interference'' and by inserting the same phrase after the phrase ''the number of days.''

Section 1.701(c)(1)(ii) is being changed to clarify that the period referred to ends on the ''date of the termination of the suspension'' rather than on the date of the next PTO communication reopening prosecution.

Section 1.701(d)(1) is being amended to clarify that the ''time'' referred to is time ''during the period of appellate review''.

Section 1.701(d)(2) is being amended to clarify that the Commissioner, under the broad discretion granted by 35 U.S.C. 154(b)(3)(C), has decided to limit consideration of applicant's due diligence only to acts occurring during the period of appellate review. The supplementary information published in the Notice of Proposed Rulemaking contained examples of what might be considered a lack of due diligence for purposes of § 1.701(d)(2) as proposed. Specifically, the supplementary information identified requests for extensions of time to respond to Office communications, submission of a response which is not fully responsive to an Office communication, and filing of informal applications as examples. In view of the comments received and the language adopted in the final rules, those examples are withdrawn. Acts which the Commissioner considers to constitute *prima facie* evidence of lack of due diligence under § 1.701(d)(2) are suspensions at applicant's request under § 1.103(a) during the period of appellate review and abandonments during the period of appellate review.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1 and 3, are being amended as indicated below:

Section 1.1 is being amended to add a paragraph (i) to provide a special ''Box Provisional Patent Application'' address to assist the Mail Room in separating and processing provisional applications and mail relating thereto.

Section 1.9 is being amended to redesignate paragraph (a) as paragraph (a)(1) and to define a national application as a U.S. application for patent which was either filed in the Office under 35 U.S.C. 111, or which entered the national stage from an international application after compliance with 35 U.S.C. 371. A new paragraph (a)(2) is being added to define the term ''provisional application'' as a U.S. national application filed under 35 U.S.C. 111(b). Also, a new paragraph (a)(3) is being added to define the term ''nonprovisional application'' as a U.S. national application for patent which was either filed in the Office under 35 U.S.C. 111(a), or which entered the national stage from an international application after compliance with 35 U.S.C. 371.

Sections 1.12 and 1.14 are being amended to replace the references to § 1.17(i)(1) with references to § 1.17(i).

Sections 1.16(a)–(e) and (g) are being amended to clarify that those sections do not apply to provisional applications. A complete provisional application does not require claims. However, provisional applications may be filed with one or more claims as part of the application. Nevertheless, no additional claim fee or multiple dependent claim fee will be required in a provisional application. Section 1.16(f) is being amended to insert the words ''basic fee''. Section 1.16(e) refers to ''the basic filing fee''. Current Office practice allows a design application to be filed without the design filing fee or the oath/declaration as set forth in § 1.53(d)(1). The change to § 1.16(f) is merely for clarification. In addition, § 1.16(a) is being amended to replace the word ''cases'' with the word ''applications'', since the word ''applications'' is used elsewhere in the rule.

Section 1.16 is also being amended to add a new paragraph (k) which lists the basic filing fee for a provisional application as $75.00 for a small entity (see §§ 1.9(c)–(f)) or $150.00 for other than a small entity as contained in Public Law 103–465. Since the filing fee for a provisional application is established by Public Law 103–465 as a 35 U.S.C. 41(a) fee, the filing fee for a provisional application will be subject to the fifty (50) percent reduction provided for in 35 U.S.C. 41(h).

Further, § 1.16 is being amended to add a new paragraph (1) which establishes the surcharge required by new § 1.53(d)(2) for filing the basic filing fee or the cover sheet required by new § 1.51(a)(2) for a provisional application at a time later than the provisional application filing date as $25.00 for a small entity or $50.00 for other than a small entity.

Section 1.17(h) is being amended to clarify that the $130.00 petition fee for filing a petition for correction of inventorship under § 1.48 applies to all patent applications, except provisional applications. Paragraph (i)(1) is being redesignated as paragraph (i) and paragraph (i)(2) is being removed. The fee for a petition under § 1.102 to make an application special has been placed in paragraph (i). The words ''of this part'', in § 1.17, paragraphs (h) and (i), are being deleted, since the paragraphs currently refer to sections in parts other than Part 1. Section 1.17(i) is also being amended to clarify that the fee set forth in paragraph (i) for filing a petition to accord a filing date under § 1.53 applies to all patent applications, except provisional applications.

A new § 1.17(q) is being added to establish a petition fee of $50.00 for filing a petition for correction of inventorship under § 1.48 in a provisional application and for filing a petition to accord a provisional application a filing date or to convert an application filed under § 1.53(b)(1) to a provisional application. The petition fee set forth in § 1.17(q) is not reduced for a small entity.

New §§ 1.17 (r) and (s) are being added to establish the fees for entry of a submission after final rejection under § 1.129(a) and for each additional invention requested to be examined under § 1.129(b), respectively. These fees have been set at $365.00 for a small entity and $730.00 for other than a small entity.

Section 1.21(l) is being amended to refer to § 1.53(d)(1).

Section 1.28(a) is being amended to clarify the procedure for establishing status as a small entity in a nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application. In such cases, applicants may file a new verified statement or rely on a verified statement filed in the prior application, if status as a small entity is still proper and desired. If applicants intend to rely on a verified statement filed in the prior application, applicants must include in the nonprovisional application either a reference to the verified statement filed in the prior application or a copy of the verified statement filed in the prior application. Status as a small entity may be established in a provisional application by complying with existing § 1.27.

Section 1.45(c) is being amended to clarify that the first sentence applies to a ''nonprovisional'' application. Section 1.45 (c) is also being amended to add a second sentence relating to joint inventors named in a provisional

application. The second sentence states that each inventor named in a provisional application must have made a contribution to the subject matter disclosed in the provisional application. All that § 1.45(c), second sentence, requires is that if a person is named as an inventor in a provisional application, that person must have made a contribution to the subject matter disclosed in the provisional application.

Sections 1.48 (a)–(c) are being amended to specify that the procedures for correcting an error in inventorship set forth in those sections apply to nonprovisional applications. New paragraph (d) is being added to establish a procedure for adding the name of an inventor in a provisional application, where the name was originally omitted without deceptive intent. Paragraph (d) does not require the verified statement of facts by the original inventor or inventors, the oath or declaration by each actual inventor in compliance with § 1.63 or the consent of any assignee as required in paragraph (a). Instead, the procedure requires the filing of a petition identifying the name or names of the inventors to be added and including a statement that the name or names of the inventors were omitted through error without deceptive intention on the part of the actual inventor(s). The statement would be required to be verified if made by a person not registered to practice before the PTO. The statement could be signed by a registered practitioner of record in the application or acting in a representative capacity under § 1.34(a). The $50.00 petition fee set forth in § 1.17(q) would also be required. New paragraph (e) is also being added setting forth the procedure for deleting the name of a person who was erroneously named as an inventor in a provisional application. The procedure requires an amendment deleting the name of the person who was erroneously named accompanied by: a petition including a statement of facts verified by the person whose name is being deleted establishing that the error occurred without deceptive intention; the fee set forth in § 1.17(q); and the written consent of any assignee.

Section 1.51 is being amended to redesignate § 1.51(a) as § 1.51(a)(1) and to include a new paragraph (a)(2) identifying the required parts of a complete provisional application. As set forth in § 1.51(a)(2), a complete provisional application includes a cover sheet, a specification as prescribed in 35 U.S.C. 112, first paragraph, any necessary drawings and the provisional application filing fee. A suggested cover sheet format for a provisional application is included as an Appendix A to this Notice of Final Rulemaking and is available from the PTO free of charge to the public. However, the rule does *not* require the applicant to use the PTO suggested cover sheet. Any paper containing the information required in § 1.51(a)(2)(i) will be acceptable. The cover sheet is required to identify the paper as a provisional application and to provide the information which is necessary for the PTO to prepare the provisional application filing receipt. Also, the residence of each named inventor and, if the invention disclosed in the provisional application was made by an agency of the U.S. Government or under a contract with an agency of the U.S. Government, the name of the U.S. Government agency and Government contract number must be identified on the cover sheet.

Section 1.51(b) is being amended to indicate that an information disclosure statement is not required and may not be filed in a provisional application. Any information disclosure statements filed in a provisional application will either be returned or disposed of at the convenience of the Office. An information disclosure statement filed in a § 1.53(b)(1) application which has been converted to a provisional application will be retained in the application after the conversion, if the information disclosure statement was filed before the petition required by § 1.53(b)(2)(ii) was filed.

The title of § 1.53 and paragraph (a) are being amended to refer to application number, rather than application serial number. The term ''application number'' is found in current § 1.53(a).

Section 1.53(b) is being redesignated as § 1.53(b)(1) and is being amended to refer to § 1.17(i) rather than § 1.17(i)(1) to conform to the change therein.

A new § 1.53(b)(2) is being added to set forth the requirements for obtaining a filing date for a provisional application. Section 1.53(b)(2) states that a filing date will be accorded to a provisional application as of the date the specification as prescribed by 35 U.S.C. 112, first paragraph, any necessary drawings, and the name of each inventor of the subject matter disclosed are filed in the PTO. The filing date requirements for a provisional application set forth in new paragraph (b)(2) parallel the existing requirements set forth in former paragraph (b), now redesignated paragraph (b)(1), except that no claim is required. In order to minimize the cost of processing provisional applications and to reduce the handling of provisional applications, amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the provisional application.

Section 1.53(b)(2)(i) is being added requiring all provisional applications to be filed with a cover sheet identifying the application as a provisional application. The section also indicates that the PTO will treat an application as having been filed under § 1.53(b)(1), unless the application is identified as a provisional application on filing. A provisional application, which is identified as such on filing, but which does not include all of the information required by § 1.51(a)(2)(i) would still be treated as a provisional application. However, the omitted information and a surcharge would be required to be submitted at a later date under new § 1.53(d)(2).

Section 1.53(b)(2)(ii) is being added to establish a procedure for converting an application filed under § 1.53(b)(1) to a provisional application. The section requires that a petition requesting the conversion and a petition fee be filed in the § 1.53(b)(1) application prior to the earlier of the abandonment of the § 1.53(b)(1) application, the payment of the issue fee, the expiration of twelve (12) months after the filing date of the § 1.53(b)(1) application, or the filing of a request for a statutory invention registration under § 1.293. The grant of any such petition would not entitle applicant to a refund of the fees properly paid in the application filed under § 1.53(b)(1).

Section 1.53(b)(2)(iii) is being added to call attention to the provisions of Public Law 103–465 which prohibit any provisional application from claiming a right of priority under 35 U.S.C. 120, 121 or 365(c) of any other application. The section also calls attention to the provisions of Public Law 103–465 which provide that no claim for benefit of an earlier filing date may be made in a design application based on a provisional application and that no request for a statutory invention registration may be filed in a provisional application. Section 1.53(b)(2)(iii) further specifies that the requirements of §§ 1.821–1.825 are not mandatory for provisional applications. However, applicants are reminded that an invention being claimed in an application filed under 35 U.S.C. 111(a) or 365 which claims benefit under 35 U.S.C. 119(e) of a provisional application must be disclosed in the provisional application in the manner provided by the first paragraph of 35 U.S.C. 112. Voluntary compliance with the requirements of §§ 1.821–1.825 in

the provisional application is recommended, in order to ensure that support for the invention claimed in the 35 U.S.C. 111(a) application can be readily ascertained in the provisional application.

Section 1.53(c) is being amended to require that any request for review of a refusal to accord an application a filing date be made by way of a petition accompanied by the fee set forth in § 1.17(i), if the application was filed under § 1.53(b)(1), or by the fee set forth in § 1.17(q), if the application was filed under § 1.53(b)(2). This reflects the current practice set forth in the Manual of Patent Examining Procedure (MPEP), section 506.02 (Sixth Edition, Jan. 1995) with regard to any request for review of a refusal to accord a filing date for an application. The PTO will continue its current practice of refunding the petition fee, if the refusal to accord the requested filing date is found to have been a PTO error.

Section 1.53(d) is being redesignated as § 1.53(d)(1).

Section 1.53(d)(2) is being added to provide that a provisional application may be filed without the basic filing fee and without the complete cover sheet required by § 1.51(a)(2). In such a case, the applicant will be notified and given a period of time in which to file the missing fee, and/or cover sheet and to pay the surcharge set forth in § 1.16(l).

Section 1.53(e) is being redesignated as § 1.53(e)(1) and amended to refer to § 1.53(b)(1). Also, a new § 1.53(e)(2) is being added to indicate that a provisional application will not be given a substantive examination and will be abandoned no later than twelve (12) months after its filing date.

Sections 1.55(a) and (b) are being amended to clarify that the sections apply to nonprovisional applications and to clarify that a nonprovisional application may claim the benefit of one or more prior foreign applications or one or more applications for inventor's certificate. Also, § 1.55(a) is being amended to replace the reference to 35 U.S.C. 119 with a reference to 35 U.S.C. 119(a)–(d). In addition, the reference to § 1.17(i)(1) in § 1.55(a) is being replaced by a reference to § 1.17(i) to be consistent with the change to § 1.17. Section 1.55(b) is also being amended to refer to 35 U.S.C. 119(d) to conform to the paragraph designations contained in Public Law 103–465.

Section 1.59 is being amended to clarify that the retention fee practice set forth in § 1.53(d)(1) applies only to applications filed under § 1.53(b)(1).

Section 1.60 is being amended to clarify in the title of the section and in paragraph (b)(1) that the procedure set forth in the section is only available for filing a continuation or divisional application if the prior application was a nonprovisional application and complete as set forth in § 1.51(a)(1). Paragraph (b)(4) is being amended to delete the requirement that the statement which must accompany the copy of the prior application include the language that ''no amendments referred to in the oath or declaration filed to complete the prior application introduced new matter therein.'' The requirement is unnecessary because any amendment filed to complete the prior application would be considered a part of the original disclosure of the prior application and, by definition, could not contain new matter. Also, paragraph (b)(4) is being amended to refer to § 1.17(i).

Section 1.62(a) is being amended to clarify that the procedure set forth in the section is only available for filing a continuation, continuation-in-part, or divisional application of a prior nonprovisional application which is complete as defined in § 1.51(a)(1). Section 1.62(a) is also being amended to clarify that a continuing application may be filed under § 1.62 after payment of the issue fee if a petition under § 1.313(b)(5) is granted in the prior application and that the request for a § 1.62 application must include identification of the inventors named in the prior application. The phrase ''Serial number, filing date'' in § 1.62(a) is being changed to ''application number.''

Section 1.62(e) is being amended to replace the reference to § 1.17(i)(1) with a reference to § 1.17(i) to be consistent with the change to § 1.17. Also, the term ''application serial number'' in § 1.62(e) is being changed to ''application number.''

Section 1.63(a) is being amended to replace the reference to § 1.51(a)(2) with a reference to § 1.51(a)(1)(ii) in order to conform with the changes in § 1.51 and to refer to an oath or declaration filed as a part of a nonprovisional application.

Section 1.67(b) is being amended to replace the reference to § 1.53(d) with a reference to § 1.53(d)(1) in order to conform with the changes in § 1.53. Furthermore, the references to §§ 1.53(b) and 1.118 are being deleted to make clear that the new matter exclusion applies to all applications including those filed under §§ 1.60 and 1.62. Also, the section is being amended to refer to a nonprovisional application.

Sections 1.78 (a)(1) and (a)(2) are being amended to clarify that the sections apply to nonprovisional applications claiming the benefit of one or more copending nonprovisional applications or international applications designating the United States of America. Section 1.78(a)(1)(iii) is being amended to refer to §§ 1.53(b)(1) and 1.53(d)(1). Section 1.78(a)(2) is also being amended to eliminate the use of serial number and filing date as an identifier for a prior application. The section will require that the prior application be identified by application number (consisting of the series code and serial number) or international application number and international filing date.

Sections 1.78 (a)(3) and (a)(4) are being added to set forth the conditions under which a nonprovisional application may claim the benefit of one or more prior copending provisional applications. The later filed nonprovisional application must be an application other than for a design patent and must be copending with each provisional application. There must be a common inventor named in the prior provisional application and the later filed nonprovisional application. Each prior provisional application must be complete as set forth in § 1.51(a)(2), or entitled to a filing date as set forth in § 1.53(b)(2) and include the basic filing fee. Section 1.78(a)(3) also includes the warning that when the last day of pendency of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, any nonprovisional application claiming benefit of the provisional application must be filed prior to the Saturday, Sunday, or Federal holiday within the District of Columbia. A provisional application may be abandoned by operation of 35 U.S.C. 111(b)(5) on a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case, a nonprovisional application claiming benefit of the provisional application under 35 U.S.C. 119(e) must be filed no later than the preceding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.78(a)(4) is also being added to provide that a nonprovisional application claiming benefit of one or more provisional applications must contain a reference to each provisional application, identifying it as a provisional application and including the provisional application number (consisting of series code and serial number). The section does not require the nonprovisional application to identify the nonprovisional application as a continuation, divisional or continuation-in-part application of the provisional application.

Sections 1.83 (a) and (c) are being amended to clarify that the sections apply to nonprovisional applications.

Section 1.97(d) is being amended to replace the reference to § 1.17(i)(1) with a reference to § 1.17(i) to be consistent with the change to § 1.17.

Section 1.101(a) is being amended to indicate that the section applies to nonprovisional applications.

Section 1.102(d) is being amended to replace the reference to § 1.17(i)(2) with a reference to § 1.17(i) to be consistent with the change to § 1.17.

Section 1.103(a) is amended to replace the reference to § 1.17(i)(1) with a reference to § 1.17(i) to be consistent with the change to § 1.17.

Section 1.129 is being added to set forth the procedure for implementing certain transitional provisions contained in Public Law 103–465. Section 1.129(a) provides for limited reexamination of applications pending for 2 years or longer as of June 8, 1995, taking into account any reference to any earlier application under 35 U.S.C. 120, 121 or 365(c). An applicant will be entitled to have a first submission entered and considered on the merits after final rejection if the submission and the fee set forth in § 1.17(r) are filed prior to the filing of an Appeal Brief and prior to abandonment of the application. Section 1.129(a) also provides that the finality of the final rejection is automatically withdrawn upon the timely filing of the submission and payment of the fee set forth in § 1.17(r). After submission and payment of the fee set forth in § 1.17(r), the next PTO action on the merits may be made final only under the conditions currently followed by the PTO for making a first action in a continuing application final. If a subsequent final rejection is made in the application, applicant would be entitled to have a second submission entered and considered on the merits under the same conditions set forth for consideration of the first submission. Section 1.129(a) defines the term ''submission'' as including, but not limited to, an information disclosure statement, an amendment to the written description, claims or drawings, and a new substantive argument or new evidence in support of patentability. For example, the submission may include an amendment, a new substantive argument and an information disclosure statement. In view of the fee set forth in § 1.17(r), any information disclosure statement previously refused consideration in the application because of applicant's failure to comply with § 1.97 (c) or (d) or which is filed as part of either the first or second submission will be treated as though it had been filed within one of the time periods set forth in § 1.97(b) and will be considered without the petition and petition fee required in § 1.97(d), if it complies with the requirements of § 1.98. In view of 35 U.S.C. 132, no amendment considered as a result of the payment of the fee set forth in § 1.17(r) may introduce new matter into the disclosure of the application.

Section 1.129(b)(1) is being added to provide for examination of more than one independent and distinct invention in certain applications pending for 3 years or longer as of June 8, 1995, taking into account any reference to any earlier application under 35 U.S.C. 120, 121 or 365(c). Under § 1.129(b)(1), a requirement for restriction or for the filing of divisional applications would only be made or maintained in the application after June 8, 1995, if: (1) The requirement was made in the application or in an earlier application relied on under 35 U.S.C. 120, 121 or 365(c) prior to April 8, 1995; (2) the examiner has not made a requirement for restriction in the present or parent application prior to April 8, 1995, due to actions by the applicant; or (3) the required fee for examination of each additional invention was not paid. Under § 1.129(b)(2), if the application contains claims to more than one independent and distinct invention, and no requirement for restriction or for the filing of divisional applications can be made or maintained, applicant will be notified and given a time period to (i) elect the invention or inventions to be searched and examined, if no election has been made prior to the notice, and pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects, (ii) in situations where an election was made in response to a requirement for restriction that cannot be maintained, confirm the election made prior to the notice and pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in addition to the one invention which applicant previously elected, or (iii) file a petition under § 1.129(b)(2) traversing the requirement without regard to whether the requirement has been made final. No petition fee is required. Section 1.129(b)(2) also provides that if the petition is filed in a timely manner, the original time period for electing and paying the fee set forth in § 1.17(s) will be deferred and any decision on the petition affirming or modifying the requirement will set a new time period to elect the invention or inventions to be searched and examined and to pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects. Under § 1.129(b)(3), each additional invention for which the required fee set forth in § 1.17(s) has not been paid will be withdrawn from consideration under § 1.142(b). An applicant who desires examination of an invention so withdrawn from consideration can file a divisional application under 35 U.S.C. 121.

Section 1.129(c) is being added to clarify that the provisions of §§ 1.129 (a) and (b) are not applicable to any application filed after June 8, 1995. However, any application filed on June 8, 1995, would be subject to a 20-year patent term.

Section 1.137 is being amended by revising paragraph (c) to eliminate, in all applications filed on or after June 8, 1995, except design applications, the requirement that a terminal disclaimer accompany any petition under § 1.137(a) not filed within six (6) months of the date of the abandonment of the application. The language ''filed before June 8, 1995'' and ''filed on or after June 8, 1995'' as used in the amended rule, refer to the actual United States filing date, without reference to any claim for benefit under 35 U.S.C. 120, 121 or 365.

Section 1.139 is being added to set forth the procedure for reviving a provisional application where the delay was unavoidable or unintentional. Section 1.139(a) addresses the revival of a provisional application where the delay was unavoidable and § 1.139(b) addresses the revival of a provisional application where the delay was unintentional. Applicant may petition to have an abandoned provisional application revived as a pending provisional application for a period of no longer than twelve months from the filing date of the provisional application where the delay was unavoidable or unintentional. It would be permissible to file a petition for revival later than twelve months from the filing date of the provisional application but only to revive the application for the twelve-month period following the filing of the provisional application. Thus, even if the petition were granted to reestablish the pendency up to the end of the twelve-month period, the provisional application would not be considered pending after twelve months from its filing date. The requirements for reviving an abandoned provisional application set forth in § 1.139 parallel the existing requirements set forth in § 1.137.

Sections 1.177, 1.312(b), 1.313(a), and 1.314 are being amended to replace the references to § 1.17(i)(1) with references to § 1.17(i) to be consistent with the change to § 1.17.

Section 1.316(d) is being amended to eliminate, in all applications filed on or after June 8, 1995, except design applications, the requirement that a terminal disclaimer accompany any petition under § 1.316(b) not filed within six (6) months of the date of the abandonment of the application. Acceptance of a late payment of an issue fee in a design application is specifically provided for in § 1.155. Therefore, § 1.316 does not apply to design applications. The language ''filed before June 8, 1955'' as used in the amended rule, refers to the actual United States filing date, without reference to any claim for benefit under 35 U.S.C. 120, 121 or 365.

Section 1.317(d) is being removed and reserved to eliminate the requirement that a terminal disclaimer accompany any petition under § 1.317(b) not filed within six (6) months of the date of lapse of the patent.

Section 1.666 is being amended to replace the reference to § 1.17(i)(1) with a reference to § 1.17(i) to be consistent with the change to § 1.17.

Section 1.701 is being added to set forth the procedure the PTO will follow in calculating the length of any extension of patent term to which an applicant is entitled under 35 U.S.C. 154(b) where the issuance of a patent on an application, other than for designs, filed on or after June 8, 1995, was delayed due to certain causes of prosecution delay. Applicants need not file a request for the extension of patent term under § 1.701. The extension of patent term is automatic by operation of law. It is currently anticipated that applicant will be advised as to the length of any patent term extension at the time of receiving the Notice of Allowance and Issue Fee Due. Review of the length of a patent term extension calculated by the PTO under § 1.701 prior to the issuance of the patent would be by way of petition under § 1.181. If an error is noted after the patent issues, patentee and any third party may seek correction of the period of patent term granted by filing a request for Certificate of Correction pursuant to § 1.322. The PTO intends to identify the length of any patent term extension calculated under § 1.701 on the printed patent.

Section 1.701(a) is being added to identify those patents which are entitled to an extension of patent term under 35 U.S.C. 154(b).

Section 1.701(b) is being added to provide that the term of a patent entitled to extension under § 1.701(a) shall be extended for the sum of the periods of delay calculated under §§ 1.701 (c)(1), (c)(2), (c)(3) and (d), to the extent that those periods are not overlapping, up to a maximum of five years. The section also provides that the extension will run from the expiration date of the patent.

Section 1.701(c)(1) is being added to set forth the method for calculating the period of delay where the delay was a result of an interference proceeding under 35 U.S.C. 135(a). The period of delay with respect to each interference in which the application was involved is calculated under § 1.701(c)(1)(i) to include the number of days in the period beginning on the date the interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application. An interference is considered terminated as of the date the time for filing an appeal under 35 U.S.C. 141 or civil action under 35 U.S.C. 146 expired. If an appeal under 35 U.S.C. 141 is taken to the Court of Appeals for the Federal Circuit, the interference terminates on the date of receipt of the court's mandate by the PTO. If a civil action is filed under 35 U.S.C. 146, and the decision of the district court is not appealed, the interference terminates on the date the time for filing an appeal from the court's decision expires. See section 2361 of the MPEP. The period of delay with respect to an application suspended by the PTO due to interference proceedings under 35 U.S.C. 135(a) not involving the application is calculated under § 1.701(c)(1)(ii) to include the number of days in the period beginning on the date prosecution in the application is suspended due to interference proceedings not involving the application and ending on the date of the termination of the suspension. The period of delay under § 1.701(a)(1) is the sum of the periods calculated under §§ 1.701 (c)(1)(i) and (c)(1)(ii), to the extent that the periods are not overlapping.

Section 1.701(c)(2) is being added to set forth the method for calculating the period of delay where the delay was a result of the application being placed under a secrecy order.

Section 1.701(c)(3) is being added to set forth the method for calculating the period of delay where the delay was a result of appellate review. The period of delay is calculated under § 1.701(c)(3) to include the number of days in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

Section 1.701(d) is being added to set forth the method for calculating any reduction in the period calculated under § 1.701(c)(3). As required by 35 U.S.C. 154(b)(3)(B), § 1.701(d)(1) provides that the period of delay calculated under § 1.701(c)(3) shall be reduced by any time during the period of appellate review that occurred before three years from the filing date of the first national application for patent presented for examination. The ''filing date'' for the purpose of § 1.701(d)(1) would be the earliest effective U.S. filing date, but not including the filing date of a provisional application or the international filing date of a PCT application. For PCT applications entering the national stage, the PTO will consider the ''filing date'' for the purpose of § 1.701(d)(1) to be the date on which applicant has complied with the requirements of § 1.494(b), or § 1.495(b), if applicable.

As contained in Public Law 103–465, 35 U.S.C. 154(b)(3)(C) states that the period of extension referred to in 35 U.S.C. 154(b)(2) ''shall be reduced for the period of time during which the applicant for patent did not act with due diligence, as determined by the Commissioner.'' Section 1.701(d)(2) is being added to provide that the period of delay calculated under § 1.701(c)(3) shall be reduced by any time during the period of appellate review, as determined by the Commissioner, during which the applicant for patent did not act with due diligence. Section 1.701(d)(2) also provide that in determining the due diligence of an applicant, the Commissioner may examine the facts and circumstances of the applicant's actions during the period of appellate review to determine whether the applicant exhibited that degree of timeliness as may reasonably be expected from, and which is ordinarily exercised by, a person during a period of appellate review. Acts which the Commissioner considers to constitute *prima facie* evidence of lack of due diligence under § 1.701(d)(2) are suspension at applicant's request under § 1.103(a) during the period of appellate review and abandonment during the period of appellate review.

Section 3.21 is being amended to provide that an assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number,

e.g., 07/123,456) and to eliminate the use of serial number and filing date as an identifier for national patent applications in assignment documents. This change is intended to eliminate any confusion as to whether an application identified by its serial number and filing date in an assignment document is an application filed under § 1.53(b)(1), 1.60 or 1.62 or a design application or a provisional application since there is a different series code assigned to each of these types of applications.

Section 3.21 is also being amended to provide that if an assignment of a patent application filed under § 1.53(b)(1) or § 1.62 is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

Further, § 3.21 is being amended to provide that if an assignment of a provisional application is executed before the provisional application is filed, it must identify the provisional application by name of each inventor and title of the invention so that there can be no mistake as to the provisional application intended.

Section 3.81 is being amended to replace the reference to § 1.17(i)(1) with a reference to § 1.17(i) to be consistent with the change to § 1.17.

Responses to and Analysis of Comments: Forty-nine written comments were received in response to the Notice of Proposed Rulemaking. These comments, along with those made at the public hearing, have been analyzed. Some suggestions made in the comments have been adopted and others have not been adopted. Responses to the comments follow.

General Comments

1. Comment: One comment questioned the use of the word ''proposed'' in the notice of proposed rulemaking in describing the statutory amendments contained in Public Law 103–465.

Response: The statutory changes contained in Public Law 103–465 were described as ''proposed'' changes in the Notice of Proposed Rulemaking because the President had not signed the legislation at the time the notice was prepared for publication. In fact, the legislation was signed by the President on December 8, 1994, which is the date of enactment.

2. Comment: Several comments urged the PTO to favorably consider the 17/20 patent term specified in H.R. 359 since this proposed legislation would overcome the existing impact of extended PTO prosecution and eliminate patent term extensions for prosecution delays. Furthermore, the proposed legislation is consistent with the Uruguay Round Agreements Act, Public Law 103–465.

Response: The administration and the PTO strongly believe that the 20-year patent term as enacted in Public Law 103–465 is the appropriate way to implement the 20-year patent term required by the GATT Uruguay Round Agreements Act. The PTO will take steps to ensure that processing and examination of applications are handled expeditiously.

3. Comment: One comment stated that the proposed rules are premature in view of the Rohrabacher bill, H.R. 359.

Response: The proposed rules are not premature. Public Law 103–465 was signed into law on December 8, 1994, with an effective date of June 8, 1995, for the implementation of the 20-year patent term and provisional applications. The Commissioner must promulgate regulations to implement the changes required by Public Law 103–465.

4. Comment: One comment stated that there is nothing in the TRIPs agreement that requires the term to be measured from filing, nor that provisional applications be provided for, nor that new fees of $730 as set forth in §§ 1.17 (r) and (s) be established. It is suggested that 35 U.S.C. 154 be amended to provide that ''every patent (other than a design patent) shall be granted a term of twenty years from the patent issue date, subject to the payment of maintenance fees.'' It was also suggested that the section regarding maintenance fees be amended to add a new fee payable at 16.5 years of $5000 (for large entity)/ $2500 (for small entity) for maintenance of patent between 17 and 20 years.

Response: The suggestion has not been adopted. The administration and the PTO strongly believe that the 20-year patent term as enacted in Public Law 103–465 is the appropriate way to implement the 20-year patent term required by the GATT Uruguay Round Agreements Act. The establishment of a provisional application is not required by GATT. The provisional application has been adopted as a mechanism to provide easy and inexpensive entry into the patent system. The filing of provisional applications is optional. Provisional applications will place domestic applicants on an equal footing with foreign applicants as far as the measurement of term is concerned because the domestic priority period, like the foreign priority period, is not counted in determining the endpoint of the patent term. As to the §§ 1.17 (r) and (s) fees, the statute authorizes the Commissioner to establish appropriate fees for further limited reexamination of applications and for examination of more than one independent and distinct inventions in an application.

5. Comment: One comment suggested that the 20-year patent term of claims drawn to new matter in continuation-in-part (CIP) applications be measured from the filing date of the CIP application, irrespective of any reference to a parent application under 35 U.S.C. 120.

Response: The suggestion has not been adopted. The term of a patent is not based on a claim-by-claim approach. Under 35 U.S.C. 154(a)(2), if an application claims the benefit of the filing date of an earlier filed application under 35 U.S.C. 120, 121 or 365(a), the 20-year term of that application will be based upon the filing date of the earliest U.S. application that the application makes reference to under 35 U.S.C. 120, 121 or 365(a). For a CIP application, applicant should review whether any claim in the patent that will issue is supported in an earlier application. If not, applicant should consider canceling the reference to the earlier filed application.

6. Comment: One comment objected to the 20-year term provisions of Public Law 103–465 because it was believed that payment of maintenance fees would be required earlier under 20-year term than under 17-year term.

Response: The payment of maintenance fees are not due earlier under 20-year term than under 17-year term. Maintenance fees continue to be due at 3.5, 7.5 and 11.5 years from the issue date of the patent.

7. Comment: Several comments suggested that the expiration date be printed on the face of the patent.

Response: The suggestion has not been adopted. The expiration date will not be printed on the face of the patent. The PTO will publish any patent term extension that is granted as a result of administrative delay pursuant to § 1.701 on the face of the patent. The term of a patent will be readily discernible from the face of the patent. Furthermore, it is noted that the term of a patent is dependent on the timely payment of maintenance fees which is not printed on the face of the patent.

8. Comment: One comment suggested that in order to aid the bar in advising clients as to whether a provisional application has had its priority claimed in a patent, the PTO should somehow link the provisional application number

with the complete application number and/or the patent number.

Response: It is contemplated by the PTO that all provisional applications will be given application numbers, starting with a series code ''60'' followed by a six digit number, e.g., ''60/123,456.'' If a subsequent 35 U.S.C. 111(a) application claims the benefit of the filing date of the provisional application pursuant to 35 U.S.C. 119(e) and the 35 U.S.C. 111(a) application results in a patent, the provisional application would be listed by its application number and filing date on the face of the patent under the heading ''Related U.S. Application Data.'' The public will be able to identify an application under the above-noted heading as a provisional application by checking to see if it has a series code of ''60.''

9. Comment: Several comments suggested that the PTO consider modifying the rules to permit the filing of all applications by assignees. This would promote harmonization with other patent laws throughout the world and would eliminate one of the difficulties which will occur for the PTO in considering claims for priority based on the filing of a provisional application.

Response: Assignee filing was recommended in the 1992 Advisory Commission Report on Patent Law Reform. The PTO is currently undertaking a project to reengineer the entire patent process. The suggestion will be taken under advisement in that project.

10. Comment: Several comments stated that a complete provisional application should not be forwarded to a central repository for storage.

Response: In view of the relatively small filing fee for a provisional application and the fact that the provisional application will not be examined, PTO handling must be kept to a minimum and these provisional applications, once complete, will be sent to the Files Repository for storage rather than being kept in the examination area of the PTO.

11. Comment: One comment suggested that the provisional application be maintained with the 35 U.S.C. 111(a) application because the examiner may need it to determine whether the 35 U.S.C. 111(a) application is entitled to the benefit of the prior provisional application and in the event of 18-month publication, there will be a demand for accessibility by the public to the provisional and 35 U.S.C. 111(a) applications upon publication.

Response: The suggestion has not been adopted. Benefit of the same provisional application may be claimed in a number of 35 U.S.C. 111(a) applications. If the PTO is to maintain the provisional application file with one of several 35 U.S.C. 111(a) applications claiming benefit of the provisional application and the 35 U.S.C. 111(a) application containing the provisional application file were to go abandoned while one of the other 35 U.S.C. 111(a) application issues, the public would be entitled to inspect the provisional application file but not the abandoned 35 U.S.C. 111(a) application file containing the provisional application file. This would create access problems.

12. Comment: One comment suggested that provisional applications be available in full to the public if the benefit of priority is being claimed.

Response: Section 1.14 relating to access applies to all applications including provisional applications. If the benefit of a provisional application is claimed in a later filed 35 U.S.C. 111(a) application which resulted in a patent, then access to the provisional application will be available to the public pursuant to § 1.14. The mere fact that a provisional application is claimed in a later filed 35 U.S.C. 111(a) application does not give the public access to the provisional application unless the 35 U.S.C. 111(a) application issues as a patent.

13. Comment: Several comments requested that the PTO clarify whether a 35 U.S.C. 111(a) application will be accorded an effective date as a reference under 35 U.S.C. 102(e) as of the filing date of the provisional application for which benefit under 35 U.S.C. 119(e) is claimed. If so, the comment questioned whether pending applications will be rejected under 35 U.S.C. 102(e) on the basis that an invention was described in a patent granted on a provisional application by another filed in the U.S. before the invention thereof by the applicant for patent.

Response: If a patent is granted on a 35 U.S.C. 111(a) application claiming the benefit of the filing date of a provisional application, the filing date of the provisional application will be the 35 U.S.C. 102(e) prior art date. A pending application will be rejected under 35 U.S.C. 102(e) on the basis that an invention was described in a patent granted on a 35 U.S.C. 111(a) application which claimed the benefit of the filing date of a provisional application by another filed in the U.S. before the invention thereof by the applicant for patent.

14. Comment: One comment suggested that the PTO issue a final rule stating that if a 35 U.S.C. 111(a) application claims the benefit of the filing date of a provisional application, the ''inventive entity'' for the purposes of 35 U.S.C. 102(e) will be the inventors listed on the issued patent, and the list of inventors in the provisional application shall have no effect on the identity of an ''inventive entity'' for the purposes of 35 U.S.C. 102(e).

Response: The suggestion has not been adopted. The ''inventive entity'' for the purpose of 35 U.S.C. 102(e) is determined by the patent and not by the inventors named in the provisional application. As long as the requirements of 35 U.S.C. 119(e) are satisfied, a patent granted on a 35 U.S.C. 111(a) application which claimed the benefit of the filing date of a provisional application has a 35 U.S.C. 102(e) prior art effect as of the filing date of the provisional application based on the inventive entity of the patent. It is clear from 35 U.S.C. 102(e) that the inventive entity is determined by the patent and a rule to this effect is not necessary.

15. Comment: One comment requested the PTO to express its position as to whether the filing of a provisional application with the subsequent filing of a 35 U.S.C. 111(a) application claiming benefit of the provisional application under 35 U.S.C. 119(e) creates a prior art date against other patent applicants under 35 U.S.C. 102(g).

Response: As to 35 U.S.C. 102(g), the filing of a provisional application with the subsequent filing of a 35 U.S.C. 111(a) application claiming benefit of the provisional application under 35 U.S.C. 119(e) creates a prior art date under 35 U.S.C. 102(g) as of the filing date of the provisional application.

16. Comment: One comment suggested that in view of the 20-year patent term measured from filing, § 1.103(a) should be deleted. The PTO should not have the right to suspend action on any application, thereby reducing applicant's term of protection.

Response: Section 1.103(a) refers to suspension of action as a result of a request by applicant. If applicant wishes to suspend prosecution and thereby reduce his/her term of protection, applicant should be permitted to do so.

17. Comment: One comment suggested that in order to avoid delays resulting from consideration of petitions to withdraw premature notices of abandonment, examiners should be required to contact an attorney of record prior to abandoning the application to find out if a response to an Office communication has been filed.

Response: The suggestion has not been adopted. However, in order to avoid loss of patent term, applicants are encouraged to check on the status in

cases where applicants have not received a return postcard from the PTO within two (2) weeks of the filing of any response to a PTO action.

18. Comment: One comment asked whether there is a ''cut-off'' date after which patentees may lose the opportunity to choose 17- vs. 20-year patent term.

Response: The ''cut-off'' date is June 8, 1995. A patent that is in force on June 8, 1995, or a patent that issues after June 8, 1995, on an application filed before June 8, 1995, is automatically entitled to the longer of the 20-year patent term measured from the earliest U.S. effective filing date or 17 years from grant. This is automatic by operation of law. Patentees need not make any election to be entitled to the longer term. A patent that issues on an application filed on or after June 8, 1995 is entitled to a 20-year patent term measured from the earliest U.S. effective filing date.

19. Comment: One comment stated that there is no clear guidance as to a patentee's ''bonus rights'' that may arise because of the difference in a 17-year term vs. a 20-year term. Will parties that were previously in a licensing arrangement have to renegotiate terms for the bonus patent term?

Response: Section 154(c) of title 35, United States Code, states that the remedies of sections 283 (injunction), 284 (damages) and 285 (attorney fees) shall not apply to acts which were commenced or for which substantial investment was made before June 8, 1995, and became infringing by reason of the 17/20 year term and that these acts may be continued only upon the payment of an equitable remuneration to the patentee that is determined in an action brought under chapters 28 and 29 of Title 35. There is no guidance provided in the statute as to the meaning of ''substantial investment'' and ''equitable remuneration.'' Licensing arrangements are between the parties to the agreement and are determined by the terms of the agreement and state law and are outside the jurisdiction of the PTO.

20. Comment: One comment questioned whether an international application designating the U.S. filed before June 8, 1995, with entry into the U.S. national stage on or after June 8, 1995, preserves the 17-year patent term measured from grant.

Response: An international application designating the U.S. that is filed before June 8, 1995, with entry into the U.S. national stage under 35 U.S.C. 371 on or after June 8, 1995, preserves the option for a 17-year patent term measured from date of grant.

21. Comment: One comment suggested that 35 U.S.C. 371(c) be amended because a declaration should not be required to obtain a filing date and a prior art date under 35 U.S.C. 102(e).

Response: The suggestion has not been adopted. This issue was not addressed in the Notice of Proposed Rulemaking. However, the suggestion will be taken under advisement as part of a comprehensive effort being conducted by the PTO to re-engineer the entire patent process.

22. Comment: One comment suggested that §§ 1.604, 1.605 and 1.607 be amended to state that provisional applications are not subject to interference.

Response: The suggestion has not been adopted because it is unnecessary. By statute, 35 U.S.C. 111(b)(8), provisional applications are not subject to 35 U.S.C. 135, i.e., a provisional application will not be placed in interference.

23. Comment: One comment suggested that §§ 1.821–1.825 be amended so that (1) only unbranched sequences of ten or more amino acids and twenty or more nucleotides which are claimed have to be included in Sequence Listings, (2) previously published sequences can be omitted, and (3) the sequences of primers and oligonucleotide probes should not be included in a Sequence Listing if encompassed by another disclosed sequence.

Response: The suggestion has not been adopted. There was no change proposed to §§ 1.821–1.825 in the Notice of Proposed Rulemaking. However, the suggestion will be taken under advisement as part of a comprehensive effort being conducted by the PTO to reengineer the entire patent process.

24. Comment: One comment suggested that §§ 5.11 to 5.15 be amended to provide for the grant of a foreign license for a provisional application.

Response: The suggestion has not been adopted. The present language of §§ 5.11 to 5.15 already provides for the grant of a foreign license for a provisional application.

25. Comment: One comment suggested that in order to assist defense agencies in reviewing application for secrecy orders, PTO should (1) automatically impose a secrecy order on any application filed under 35 U.S.C. 111(a) if a secrecy order was previously imposed on corresponding provisional application, and (2) require applications filed under 35 U.S.C. 111(a) based on a previous provisional application to indicate changes made to the provisional application in the 35 U.S.C. 111(a) application by means of underlining and bracketing.

Response: The suggestions have not been adopted. The PTO cannot automatically impose a secrecy order on any 35 U.S.C. 111(a) applications even if a secrecy order was previously imposed on a provisional application, for which benefit under 35 U.S.C. 119(e) is claimed, unless the agency which imposed the secrecy order on the provisional application specifically requests the PTO to do so since the 35 U.S.C. 111(a) application could disclose subject matter which is different from that which is disclosed in the provisional application.

As to item (2), the PTO will not require applicants to identify the differences in subject matter disclosed in the 35 U.S.C. 111(a) application and the provisional application.

26. Comment: One comment suggested that in order to relieve defense agencies from possible liability for secrecy orders imposed for more than 5 years, the PTO should seek legislation setting patent term at 20 years from the earliest filing date or 17 years from the issue date, whichever is longer, for any patent application placed under secrecy order.

Response: The suggestion has not been adopted. The PTO strongly believes that the 20-year patent term as enacted in Public Law 103–465 is the appropriate way to implement the 20-year patent term required by the GATT Uruguay Round Agreements Act. The 35-year limit for patent term extension set forth in § 1.701(b) is required by statute, 35 U.S.C. 154(b).

Comments Directed to Specific Rules

27. Comment: One comment suggested that in order to eliminate the need for the expression ''other than a provisional application'' in other parts of the regulations, § 1.9 should be amended to identify a 35 U.S.C. 111(a) application by some term that can be used in the rules to distinguish that type of application from a provisional application.

Response: The suggestion has been adopted. The rules are being amended to include a definition of the term ''nonprovisional application'' in § 1.9(a) to describe an application filed under 35 U.S.C. 111(a) or 371. Further, the term ''nonprovisional application'' is being used in the final rules where the rule applies only to applications filed under 35 U.S.C. 111(a) or 371 and not to provisional applications.

28. Comment: One comment suggested that the rules be simplified if

a ''national application'' could be defined in § 1.9 to exclude a provisional application.

Response: The suggestion has not been adopted. Section 1.9(a), prior to this rulemaking, defined a national application to include any application filed under 35 U.S.C. 111. A provisional application is an application filed under 35 U.S.C. 111. It is appropriate to define a provisional application as a special type of national application.

29. Comment: One comment requested an explanation of the showing required in a petition under §§ 1.12 and 1.14 for access to pending applications and to assignment records for pending applications.

Response: There was no substantive change proposed to either § 1.12 or 1.14 in the Notice of Proposed Rulemaking. Thus, the showing required in a petition under § 1.12 or 1.14 remains the same after this final rulemaking as before. A discussion of such a petition can be found in section 103 of the MPEP.

30. Comment: Several comments objected to the definition in § 1.45(c) of joint inventors in provisional applications as being those having made a contribution to ''the subject matter disclosed'' in the provisional application. Various language, such as, ''the subject matter which constitutes the invention,'' ''subject matter disclosed and regarded to be the invention,'' ''disclosed invention,'' ''the inventive subject matter disclosed'' was suggested. Another comment requested guidance as to the determination of inventorship in a provisional application.

Response: The suggestion has not been adopted. The term ''invention'' is typically used to refer to subject matter which applicant is claiming in his/her application. Since claims are not required in a provisional application, it would not be appropriate to reference joint inventors as those who have made a contribution to the ''invention'' disclosed in the provisional application. If the ''invention'' has not been determined in the provisional application because no claims have been presented, then the name(s) of those person(s) who have made a contribution to the subject matter disclosed in the provisional application should be submitted. Section 1.45(c) states that ''if multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter disclosed in the provisional application.'' All that § 1.45(c) requires is that if someone is named as an inventor, that person must have made a contribution to the subject matter disclosed in the provisional application. When applicant has determined what the invention is by the filing of the 35 U.S.C. 111(a) application, that is the time when the correct inventors must be named. The 35 U.S.C. 111(a) application must have an inventor in common with the provisional application in order for the 35 U.S.C. 111(a) application to be entitled to claim the benefit of the provisional application under 35 U.S.C. 119(e).

31. Comment: Several comments suggested that it might be desirable to correct inventorship in a provisional application where an individual was erroneously named as an inventor and that the procedure for doing so should be set forth in § 1.48.

Response: Under 35 U.S.C. 119(e), as contained in Public Law 103–465, a later filed application under 35 U.S.C. 111(a) may claim priority benefits based on a copending provisional application so long as the applications have at least one inventor in common. An error in naming a person as an inventor in a provisional application would not require correction by deleting the erroneously named inventor from the provisional application since this would have no effect upon the ability of the provisional application to serve as a basis for a priority claim under 35 U.S.C. 119(e). However, in response to the comments, § 1.48 is being amended to include a new paragraph (e) which sets forth the requirements for deleting the names of the inventors incorrectly named as joint inventors in a provisional application, namely, a petition including a verified statement by the inventor(s) whose name(s) are being deleted stating that the error arose without deceptive intent, the fee set forth in § 1.17(q) and the written consent of all assignees.

32. Comment: One comment suggested that in order to make the procedures for provisional applications as simple as possible, there is no need to provide any rules to add inventor(s) or change inventorship in a provisional application since the whole concept of inventorship is meaningless without a claim. Error in inventorship can be corrected by the filing of and 35 U.S.C. 111(a) application within 12 months after the filing of a provisional application.

Response: The suggestion has not been adopted. One of the requirements of 35 U.S.C. 119(e) is that a 35 U.S.C. 111(a) application must have at least one inventor in common with a provisional application in order for the 35 U.S.C. 111(a) application to be entitled to claim the benefit of the filing date of the provisional application. In situations where there is no inventor in common between the 35 U.S.C. 111(a) application and the provisional application due to error in naming the inventors in the provisional application, procedures must be established to permit applicant to correct the inventorship in the provisional application.

33. Comment: One comment suggested that an individual who is the inventor of subject matter disclosed in a provisional application, but who is not named as an inventor in the provisional application because that subject matter was not intended to be claimed in a later filed 35 U.S.C. 111(a) application, could be added as an inventor pursuant to § 1.48(d) in the provisional application if the subject matter was claimed in 35 U.S.C. 111(a) application.

Response: The individual could be added as an inventor pursuant to § 1.48(d) in the provisional application so long as the individual was originally omitted without deceptive intent.

34. Comment: One comment questioned whether it would be proper for a registered practitioner who did not file the provisional application to sign the statement required by § 1.48(d) that the error occurred without deceptive intention on the part of the inventors.

Response: It would be proper for a registered practitioner who did not file the provisional application to sign the statement required by § 1.48(d), if the registered practitioner has a reasonable basis to believe the truth of the statement being signed.

35. Comment: One comment suggested that there should be no diligence requirement to correct inventorship in a provisional application.

Response: Diligence is not a requirement to correct inventorship in a provisional application in either § 1.48(d) or 1.48(e).

36. Comment: One comment suggested that § 1.48(a) be amended by deleting the requirements for ''a statement of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred'' and for the written consent of any assignee.

Response: The suggestion has not been adopted. There was no substantive change proposed to § 1.48(a) in the Notice of Proposed Rulemaking. Since the correction of inventorship affects ownership rights, the existing rules are designed to provide assurances that all parties including the original named inventors and all assignees agree to the change of inventorship. If the

requirements for verified statements of facts from the original named inventors and written consent of the assignees are to be deleted, the PTO would no longer have the assurances that all parties agree to the change.

37. Comment: One comment expressed concern that a provisional application filed without a claim will leave subsequent readers with little or no clue as to what the inventors in the provisional application considered to be their invention at the time the provisional application was filed and doubted that a provisional application filed without a claim defining the invention could ever provide a sufficient disclosure to support a claim for a foreign or U.S. priority date.

Response: Claims are not required by the statute to provide a specification in compliance with the requirements of 35 U.S.C. 112, first paragraph. However, if an applicant desires, one or more claims may be included in a provisional application. Any claim field with a provisional application will, of course, be considered part of the original provisional application disclosure.

38. Comment: One comment suggested that the PTO issue a specification format or guideline for a provisional application to enable an inventor to comply with 35 U.S.C. 112, first paragraph.

Response: The format of a provisional application is the same as for other applications and is set forth in existing § 1.77 which is applicable to provisional applications except no claims are required for provisional applications.

39. Comment: Several comments suggested that the PTO revise its rules to clarify that strict adherence to the enablement, description and best mode requirements of 35 U.S.C. 112, first paragraph, is not required in provisional applications.

Response: The suggestion has not been adopted. The substantive requirements of a specification necessary to comply with 35 U.S.C. 112, first paragraph, are established by court cases interpreting that section of the statute, not by rule. The case law applies to provisional applications as well as to applications filed under 35 U.S.C. 111(a).

40. Comment: Several comments suggested that the rules or comments published with the Final Rule indicate whether there is any requirement to update the best mode disclosed in the provisional application when filing the 35 U.S.C. 111(a) application.

Response: No rule was proposed to address the issue when going from a provisional application to a 35 U.S.C. 111(a) application because no current rule exists when going from one 35 U.S.C. 111(a) application to another 35 U.S.C. 111(a) application. The question of whether the best mode has to be updated is the same when going from one 35 U.S.C. 111(a) application to another 35 U.S.C. 111(a) application or from a provisional application to a 35 U.S.C. 111(a) application. Accordingly, the rationale of *Transco Products, Inc.* v. *Performance Contracting Inc.*, 38 F.3d 551, 32 U.S.P.Q.2d 1077 (Fed. Cir. 1994), would appear to be applicable. Clearly, if the substantive content of the application does not change when filing the 35 U.S.C. 111(a) application, there is no requirement to update the best mode. However, if subject matter is added to the 35 U.S.C. 111(a) application, there may be a requirement to update the best mode.

41. Comment: One comment suggested that § 1.51(c) be amended to permit a provisional application to be filed with an authorization to charge fees to a deposit account.

Response: Section 1.51(c) permits an application to be filed with an authorization to charge fees to a deposit account. Section 1.51(c) applies to provisional applications. Therefore, no change to § 1.51(c) is necessary.

42. Comment: One comment suggested that the PTO confirm that there will be no procedural examination of a provisional application other than to determine whether the provisional application complies with § 1.51(a)(2).

Response: The PTO intends to require compliance with the formal requirements of §§ 1.52(a)–(c) only to the extent necessary to permit the PTO to properly microfilm and store the application papers.

43. Comment: Several comments suggested that an English translation of a foreign language provisional application should not be required unless necessary in prosecution of the 35 U.S.C. 111(a) application to establish benefit. If an English translation is required, there is no useful purpose to require the translation at any time earlier than the filing of 35 U.S.C. 111(a) application claiming the benefit of the provisional application.

Response: Provisional applications may be filed in a language other than English as set forth in existing § 1.52(d). However, an English language translation is necessary for security screening purposes. Therefore, the PTO will require the English language translation and payment of the fee required in § 1.52(d) in the provisional application. Failure to timely submit the translation in response to a PTO requirement will result in the abandonment of the provisional application. If a 35 U.S.C. 111(a) application is filed without providing the English language translation in the provisional application, the English language translation will be required to be supplied in every 35 U.S.C. 111(a) application claiming priority of the non-English language provisional application.

44. Comment: One comment suggested that a new model oath or declaration form for use in claiming 35 U.S.C. 119(e) priority and a ''cover sheet'' for use in filing provisional applications be published as an addendum to the final rules.

Response: The suggestion has been adopted. See Appendix A for the sample cover sheet for filing a provisional application and Appendix B for the sample declaration for use in claiming 35 U.S.C. 119(e) priority.

45. Comment: One comment suggested that the statement in § 1.53(b)(2) that the provisional application will not be given a filing date if all the names of the actual inventor or inventor(s) are not supplied be deleted and § 1.41 be amended to make an exception for provisional applications. The comment suggested that 35 U.S.C. 111(b) is satisfied as long as the name of one person who made an inventive contribution to the subject matter of the application is given.

Response: The suggestion has not been adopted. Section 111(b) of title 35, United States Code, states that ''a provisional application shall be made or authorized to be made by the inventor.'' This language parallels 35 U.S.C. 111(a). The naming of inventors for obtaining a filing date for a provisional application is the same as for other applications. A provisional application filed with the inventors identified as ''Jones et al.'' will not be accorded a filing date earlier than the date upon which the name of each inventor is supplied unless a petition with the fee set forth in § 1.17(i) is filed which sets forth the reasons the delay in supplying the names should be excused. Administrative oversight is an acceptable reason. It should be noted that for a 35 U.S.C. 111(a) application to be entitled to claim the benefit of the filing date of a provisional application, the 35 U.S.C. 111(a), application must have at least one inventor in common with the provisional application.

46. Comment: One comment suggested that a drawing should not be required to obtain a filing date for a provisional application. Whatever is filed should be given a serial number and filing date in order to establish status as a provisional application, regardless of what is in the specification or drawing. If the provisional

application omitted drawings, has pages missing, or is otherwise incomplete, then applicant may not be able to rely on the filing date of the provisional application in a subsequently filed 35 U.S.C. 111(a) application. It should not be the job of the Application Branch to review compliance with § 1.81(a).

Response: Section 111(b) of title 35, United States Code, states that a provisional application must include a specification as prescribed by 35 U.S.C. 112, first paragraph and a drawing as prescribed by 35 U.S.C. 113. Drawings are required pursuant to 35 U.S.C. 113 if they are necessary to understand the subject matter sought to be patented. If a provisional application as filed omitted drawings and/or has pages missing, the provisional application is prima facie incomplete and no filing date will be granted. Application Branch currently reviews all applications to make sure that no filing date will be granted to an application that is prima facie incomplete. Application Branch will perform the same type of review with provisional applications. If a filing date is not granted to a provisional application because it is prima facie incomplete, applicant may petition the PTO under § 1.182 to grant a filing date to the provisional application as of the date of deposit of the application papers if it can be shown that the omitted items are not necessary for the understanding of the subject matter.

47. Comment: One comment objected to the requirement in § 1.53(b)(2)(i) for a cover sheet identifying the application as a provisional application because it is unnecessarily rigid and contrary to Congress' desire to keep the filing of provisional application as simple as possible.

Response: The requirement that a provisional application be specifically identified on filing as a provisional application is not seen to be burdensome on the applicant and is necessary for the PTO to properly process the papers as a provisional application. All an applicant is required to do in order to comply with the requirement of § 1.53(b)(2)(i) is to include a transmittal sheet identifying the papers being filed as a PROVISIONAL application.

48. Comment: Several comments suggested that in § 1.53(b)(2)(ii), as proposed, the phrase ''the expiration of 12 months after the filing date of the provisional application'' should read ''the expiration of 12 months after the filing date of the § 1.53(b)(1) application''.

Response: The suggestion has been adopted.

49. Comment: One comment objected to the requirement in § 1.53(b)(2)(ii) for a petition to convert an application filed under § 1.53(b)(1) to a provisional application and suggested that any confusion concerning applicant's intention could be handled informally without a petition or petition fee.

Response: The requirement for a petition and fee is intended to ensure that the cost of any PTO reprocessing is borne specifically by the applicant requesting the action.

50. Comment: Several comments suggested that the filing fee required in an application filed under 35 U.S.C. 111(a) claiming benefit of the filing date of an earlier 35 U.S.C. 111(a) application which has been converted to a provisional application under proposed § 1.53(b)(2)(ii) be reduced, since the $730/$365 filing fee was paid in the earlier application.

Response: The suggestion has not been adopted. The filing fee required in an application filed under 35 U.S.C. 111(a) is set by statute. The statute does not provide for the suggested reduction in the filing fee.

51. Comment: One comment suggested that the proposed § 1.53(b)(2)(iii) should apply retroactively to permit applications filed between June 9, 1994, and June 8, 1995, to be converted to provisional applications.

Response: The suggestion has not been adopted. The statute does not permit a provisional application to have a filing date prior to June 8, 1995.

52. Comment: One comment suggested that § 1.53(b)(2)(ii) be revised to state that the petition requesting conversion must also be filed before (1) the application becomes involved in interference, or (2) notice by the PTO of intent to publish the application as a statutory invention registration. This suggestion conforms with 35 U.S.C. 11(b)(8).

Response: The suggestion has not been fully adopted. It is not necessary to include interference in § 1.53(b)(2)(ii) because if a 35 U.S.C. 111(a) application becomes involved in an interference proceeding and applicant files a petition requesting conversion of that 35 U.S.C. 111(a) application to a provisional application, the 35 U.S.C. 111(a) will be removed from the interference proceeding upon granting the petition to convert. When a subsequent 35 U.S.C. 111(a) application is filed based on the provisional application, the subsequent 35 U.S.C. 111(a) application could be placed in the interference proceeding if necessary. As to the reference to statutory invention registration, § 1.53(b)(2)(ii) is being amended to require the petition and the fee be filed prior to the earlier of the abandonment of the 35 U.S.C. 111(a) application, the payment of the issue fee, the expiration of 12 months after the filing date of the 35 U.S.C. 111(a) application, or the filing of a request for a statutory invention registration under § 1.293.

53. Comment: One comment suggested that the procedures for converting a 35 U.S.C. 111(a) application to a provisional application be explained in greater detail in § 1.53(b)(2)(ii) or in the discussion. If a 35 U.S.C. 111(a) application is converted to a provisional application on the last day of the 12-month period, and a second 35 U.S.C. 111(a) application is concurrently filed, how should this be done and how should the first sentence in the second 35 U.S.C. 111(a) application be worded. Furthermore, if a 35 U.S.C. 111(a) application is converted to a provisional application on the last day of the 12-month period, will it be necessary to file a second 35 U.S.C. 111(a) application on the same day, or else lose the priority claim.

Response: The suggestion has not been adopted. The language in § 1.53(b)(2)(ii) is clear relating to the requirements for converting a 35 U.S.C. 111(a) application to a provisional application. If applicant wishes to convert a 35 U.S.C. 111(a) application to a provisional application, applicant must file a petition requesting the conversion along with the petition fee set forth in § 1.17(q). The petition and the fee must be filed prior to the earlier of the abandonment of the 35 U.S.C. 111(a) application, the payment of the issue fee, the expiration of 12 months after the filing date of the 35 U.S.C. 111(a) application, or the filing of a request for a statutory invention registration under § 1.293. In the example noted in the comment, if a 35 U.S.C. 111(a) application is converted to a provisional application on the last day of the 12-month period, a second 35 U.S.C. 111(a) application must be filed on that same day, otherwise, applicant will lose the priority pursuant to 35 U.S.C. 119(e). An example of how the first sentence of the second 35 U.S.C. 111(a) application would read is, ''This application claims the benefit of U.S. Provisional Application No. 60/———, filed ———, which was converted from Application No.———.''

54. Comment: One comment suggested that the PTO consider a rule mandating that any prior U.S. application that would have been eligible for conversion to a provisional application that is abandoned in favor of a continuing application within one

year of the earlier priority date asserted be deemed constructively converted to a provisional application.

Response: The suggestion has not been adopted. Conversion of a 35 U.S.C. 111(a) application to a provisional will be permitted only by way of a petition and under the conditions set forth in § 1.53(b)(2)(ii). One reason for this is that the PTO plans to provide sufficient information on the printed patent to determine the end date of the 20-year patent term by identifying provisional applications using a unique series code, i.e., ''60''. Thus, a 35 U.S.C. 111(a) application converted to a provisional application will need to be reprocessed by the PTO with a new application number. The petition fee is intended to reimburse the PTO for the extra processing necessitated by the conversion.

55. Comment: One comment stated that § 1.53(b)(2)(ii) permits the conversion of a 35 U.S.C. 111(a) application to a provisional application. However, it is silent as to whether such a conversion would kill any benefit the 35 U.S.C. 111(a) application had of domestic and/or foreign priority.

Response: Section 111(b)(7) of title 35, United States Code, specifically states that a provisional application shall not be entitled to the right of priority of any other application under 35 U.S.C. 119 or 365(a) or to the benefit of an earlier filing date in the United States under 35 U.S.C. 120, 121, or 365(c). If a 35 U.S.C. 111(a) application is converted to a provisional application, the granting of the conversion will automatically eliminate any claim of priority which could have been made in the 35 U.S.C. 111(a) application.

56. Comment: Several comments suggested that it was inconsistent with the purpose of the provisional application to require any compliance with the Sequence Disclosure Rules §§ 1.821–1.823 and 1.825, since the provisional applications are not examined and there is no comparison of the sequences with the prior art.

Response: The Office agrees with the comments that a provisional application need not comply with the requirements of §§ 1.821 through 1.825. Section 1.53(b)(2)(iii) is being amended to indicate that the requirements of §§ 1.821 through 1.825 regarding sequence listings are not mandatory for a provisional application. However, applicants are cautioned that in order for a 35 U.S.C. 111(a) application to obtain the benefit of the filing date of an earlier filed provisional application, the claimed subject matter of the 35 U.S.C. 111(a) application must have been disclosed in the provisional application in a manner provided by 35 U.S.C. 112, first paragraph. Applicants are encouraged to follow the sequence rules to ensure that support for the invention claimed in the 35 U.S.C. 111(a) application can be readily ascertained in the provisional application.

57. Comment: One comment suggested that the language in § 1.53(e)(2) that a provisional application will become abandoned no later than twelve months after its filing date was misleading and that the words ''no later than'' should be deleted because it was believed that a provisional application could not be abandoned prior to twelve months after its filing date.

Response: The statute does not state that a provisional application can never be abandoned prior to twelve months after its filing date. In fact, a provisional application may be abandoned as a result of applicant's failure to timely respond to a PTO requirement. For example, if a provisional application which has been accorded a filing date does not include the appropriate filing fee or the cover sheet required by § 1.51(a)(2), applicant will be so notified if a correspondence address has been provided and given a period of time within which to file the fee, cover sheet and to pay the surcharge as set forth in § 1.16(l). Failure to timely respond will result in the abandonment of the application. This may occur prior to twelve months after its filing date. Furthermore, a provisional application may also be expressly abandoned prior to twelve months from its filing date.

58. Comment: One comment objected to the deletion of the ''retention fee'' practice in § 1.53(d) since it permits an applicant in a first application claiming benefits under 35 U.S.C. 119 (a)–(d) or 120 to correct inventorship by filing a second application without having to pay the full filing fee in the first application.

Response: Since the comment indicated that there is a benefit to retain the retention fee practice, the proposal to eliminate the practice is withdrawn.

59. Comment: One comment stated that the language of §§ 1.53 (d)(1) and (d)(2) indicates an intent by the PTO to mail the ''Notice Of Missing Parts'' to applicant's post office address and argues that the ''Notice'' should be mailed to the registered practitioner who filed the application on behalf of the applicant.

Response: The language in §§ 1.53 (d)(1) and (d)(2) states that the applicant will be notified of the missing part, if a correspondence address is provided. This means that the ''Notice'' to applicant will be mailed to the correspondence address provided in the application papers. Under current PTO practice, if no specific correspondence address is identified in the application, the address of the registered practitioner who filed the application on behalf of the applicant is used as the correspondence address. If no specific correspondence address or registered practitioner is identified in the application, the post office address of the first named inventor is used as the correspondence address. No change in current PTO practice in this regard is required as a result of § 1.53(d)(2) nor is any change planned.

60. Comment: Several comments objected to the proposed deletion of § 1.60. One comment suggested that the deletion of § 1.60 was a major rule change and should have been proposed separate from the proposed rules dealing with the changes in practice required by Public Law 103–465.

Response: In view of the comments received, the proposal to delete § 1.60 is withdrawn. However, the proposal will be considered as part of a comprehensive effort being conducted by the PTO to reengineer the entire patent process.

61. Comment: One comment suggested that in view of the deletion of § 1.60, language should be incorporated in § 1.53(a)(1) to state that a copy of the prior application along with a copy of the declaration may be filed to obtain a filing date. Furthermore, full details and guidelines of the procedure should accompany the rule.

Response: The suggestion has not been adopted. The proposal to delete § 1.60 is withdrawn in view of several comments received objecting to the deletion.

62. Comment: One comment suggested that the removal of the stale oath practice be codified.

Response: The suggestion has not been adopted. Neither the statute nor the rules require a recent date of execution to appear on the oath or declaration. The PTO practice of objecting to an oath or declaration where the time elapsed between the date of execution and the filing date of the application is more than three months is found in section 602.05 of the MPEP. Therefore, the removal of the stale oath practice will be accomplished by amending the MPEP.

63. Comment: One comment questioned whether a copy of an application faxed to an attorney could be filed in the PTO as the application papers.

Response: Yes. While a patent application may not be faxed directly to the PTO, an application faxed to an

attorney may be forwarded to the PTO by mail or courier as the application papers provided the papers meet the formal requirements of § 1.52. Effective November 22, 1993, § 1.4 was amended to include a new paragraph (d) to specify that most correspondence filed in the PTO, which requires a person's signature, may be an original, a copy of an original or a copy of a copy. Only correspondence identified in §§ 1.4(e) and (f) require the original to be filed in the PTO. Thus, an oath or declaration required by § 1.63, 1.153, 1.162 or 1.175 may be an original, a copy of an original or a copy of a copy. See 1156 Off. Gaz. Pat. Office 61 (November 16, 1993).

64. Comment: One comment suggested that applicant be permitted to use § 1.62 procedure to file the 35 U.S.C. 111(a) application which claims the benefit of a provisional application, at least in those situations where the 35 U.S.C. 111(a) application has been converted to a provisional application which is followed by the filing of a second 35 U.S.C. 111(a) application.

Response: The suggestion has not been adopted. Section 1.62 will not be amended to permit the filing of a 35 U.S.C. 111(a) application based on a provisional application because the PTO sees this situation as a trap for applicants. The filing procedures would be made more complicated if an exception is provided to address situations where a 35 U.S.C. 111(a) application is converted to a provisional application and a second 35 U.S.C. 111(a) application is later filed. However, the suggestion will be taken under advisement when greater familiarity with provisional applications is developed.

65. Comment: One comment suggested that § 1.62 procedure be replaced with a simple petition procedure to reopen prosecution.

Response: The suggestion is not being adopted. However, the suggestion will be taken under advisement as part of a comprehensive effort being conducted by the PTO to reengineer the entire patent process.

66. Comment: One comment suggested that the language in § 1.62(a) that requires an identification of the ''applicant's name of the prior complete application'' is confusing and should be clarified.

Response: The suggestion has been adopted. Section 1.62 is being amended to require the identification of the ''applicants named in the prior complete application.''

67. Comment: One comment suggested that § 1.62 be amended to state that the refiling procedures set forth in § 1.62 may be used after the issue fee is paid when a petition under § 1.313(b)(5) is granted. This practice is permitted pursuant to the notice published in 1138 Off. Gaz. Pat. Office 40 (May 19, 1992).

Response: The suggestion has been adopted.

68. Comment: One comment suggested that § 1.62 be amended to clarify whether applicant needs to re-list, in the § 1.62 application, all the references cited by the examiner and applicant in the parent application in order to get those references printed on the eventual patent.

Response: The suggestion has not been adopted. Section 609 of the MPEP (Sixth Edition, Jan. 1995) has been amended to clarify that in a § 1.62 application, references submitted and cited in the parent application need not be resubmitted. These references will be printed on the patent. However, in any continuing application filed under § 1.53(b)(1) or 1.60, a list of the references must be resubmitted if applicant wishes to have the references printed in the eventual patent.

69. Comment: One comment suggested that § 1.67 should go into more detail on when supplemental oaths are required in § 1.53 filings of continuation and divisional applications.

Response: The suggestion has been adopted because it is seen to be unnecessary and no substantive change was proposed to § 1.67 in the Notice of Proposed Rulemaking.

70. Comment: One comment suggested that ''not but'' in § 1.67(b) should read ''but not''.

Response: The suggestion has been adopted.

71. Comment: Several comments suggested that a rule be provided to state that an application for patent is permitted to claim the benefit of the filing date of more than one prior provisional application so long as the applicant complies with all statutory provisions.

Response: The suggestion has been adopted. Section 1.78(a)(3) is being amended to indicate that applicants are permitted to separately claim the benefit of the filing date of more than one prior provisional application in a later filed 35 U.S.C. 111(a) application provided all statutory requirements of 35 U.S.C. 119(e) are complied with. It is noted that current practice permits an application to claim the benefits of the filing date of more than one prior foreign application under 35 U.S.C. 119(a)–(d) and of more than one prior copending U.S. application under 35 U.S.C. 120, without an explicit statement to that effect in the rules. Since the final rules are being amended to specifically permit applications filed under 35 U.S.C. 111(a) to claim the benefits of the filing date of more than one prior copending provisional application, corresponding changes are also being made to §§ 1.55 and 1.78(a)(1) relating to claims for the benefits available under 35 U.S.C. 119(a)–(d) and 120 to be consistent with § 1.78(a)(3).

72. Comment: Several comments requested that the PTO specify language to use in the first sentence of an application when priority is based on more than one provisional application.

Response: Section 1.78(a)(4) requires that ''any application claiming the benefit of a prior filed copending provisional application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior provisional application, identifying it as a provisional application, and including the provisional application number.'' Where a 35 U.S.C. 111(a) application claims the benefit of more than one provisional application, a suitable reference would read, ''This application claims the benefit of U.S. Provisional Application No. 60/——, filed —— and U.S. Provisional Application No. 60/——, filed ——.'' In addition, for an application which is claiming the benefit under 35 U.S.C. 120 of a prior application, which in turn claims the benefit of a provisional application under 35 U.S.C. 119(e), a suitable reference would read, ''This application is a continuation of U.S. application No. 08/——, filed ——, now abandoned, which claims the benefit of U.S. Provisional Application No. 60/——, filed ——.''

73. Comment: One comment suggested that the rules address the effect on patent term where an applicant in a continuing application deletes the reference to the prior filed application before the patent issues.

Response: an applicant has full control over claims to the benefit of an earlier filing date under 35 U.S.C. 120, 121 or 365(c). The 20-year patent term will be based upon the filing date of the earliest U.S. application that the applicant makes reference to under 35 U.S.C. 120, 121 and 365(c). Whether an applicant is entitled to the benefit of the filing date of an earlier application is something that an applicant should examine before the patent is issued. The PTO is not, unless it comes up as an issue in the examination process, going to determine whether any of the claims are entitled to the earlier filing date. Applicant however, should determine whether the claims are entitled to or require the benefit of the earlier filing

date. If not, the applicant should consider canceling the reference to the earlier filed application to avoid having the 20-year patent term measured from that earlier filing date. An amendment adding or deleting a reference to an earlier filed application presented prior to a final action will be entered, however, the claims may be subject to possible intervening prior art.

74. Comment: One comment stated that in view of the fact that a provisional application is not entitled to claim the benefit of a prior filed copending national or international application as stated in § 1.53(b)(2)(iii), the phrase ''other than a provisional application'' in § 1.78(a)(2) is unnecessary.

Response: Section 1.78(a)(2) is being amended to state that ''any nonprovisional application claiming the benefit of a prior copending nonprovisional or international application must contain * * *.'' Section 1.78(a)(2) addresses a 35 U.S.C. 111(a) application which claims the benefit of a prior copending 35 U.S.C. 111(a) application or international application.

75. Comment: Several comments objected to the content requirements for drawings filed in a provisional application as originally set forth in proposed § 1.83(a)(2). One comment suggested that no rule was necessary to set forth the required content of drawings in a provisional application.

Response: In view of the comments received, the proposed amendment to § 1.83 is withdrawn. Under 35 U.S.C. 113, first sentence, applicant must furnish drawings in a provisional application ''where necessary for the understanding of the subject matter sought to be patented.'' This requirement is also stated in existing § 1.81(a). Therefore, no further elaboration on the content of the drawings in a provisional application is believed necessary in the rules.

76. Comment: One comment suggested that the rules specify that formal drawings are not required in a provisional application.

Response: The suggestion has not been adopted. However, the PTO intends to examine provisional applications for requirements of form only to the extent that is necessary to permit normal storage and microfilming of the application papers. Formal drawings are usually not required for those purposes.

77. Comment: Several comments suggested that § 1.97(d) be amended to require the PTO to consider any information disclosure statement submitted after a final rejection or notice of allowance if an appropriate fee is paid.

Response: The suggestion has not been adopted because no substantive change to this rule was proposed in the Notice of Proposed Rulemaking. The existing rules are designed to encourage prompt submission of information to the PTO. To permit applicant to merely pay a fee to have any information disclosure statement submitted after a final rejection or Notice of Allowance would be contrary to the effort to encourage prompt submissions.

78. Comment: One comment suggested that § 1.97 be changed so that an office action which uses a newly cited reference as a ground for rejection under 35 U.S.C. 102 or 103 cannot be made final.

Response: The suggestion has not been adopted because no substantive change to this rule was proposed in the Notice of Proposed Rulemaking.

79. Comment: One comment suggested that the words ''which are not examined'' in § 1.101 as proposed are unnecessary and could create a negative implication that some provisional applications are examined.

Response: The suggestion has not been adopted. By statute, provisional applications are not subject to 35 U.S.C. 131, i.e., the Commissioner is not permitted to examine a provisional application for patentability.

80. Comment: Several comments stated that it is unfair to require small entities to pay the full $730.00 fee set forth in proposed § 1.129. It is suggested that the fee be changed to $365.00 or less.

Response: Pursuant to Public Law 103–465, the Commissioner has the authority to establish appropriate fees for the further limited reexamination of applications and for the examination of more than one independent and distinct invention in an application. As a result of additional review, it was concluded that these fees may be reduced by 50% for small entities. Sections 1.17 (r) and (s) are being amended to indicate that the fees are reduced by 50% for small entities, that is, $365.00 for small entities.

81. Comment: Several comments suggested that the transitional procedure set forth in § 1.129(a) as proposed is equivalent to filing one application, i.e., it provides for an extra examination and reexamination after the original final rejection, and, therefore, the requirement for two $730.00 fees, which is equivalent to two filing fees, is unwarranted. Another comment suggested that if the proposed $730.00 fee is adopted, the examiner should be instructed to treat the after-final amendment as any other initial filing, i.e., a new application, not as an amendment submitted after a non-final office action.

Response: Under existing PTO practice, it would not be proper to make final a first Office action in a continuing or substitute application where the continuing or substitute application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised. The identical procedure will apply to examination of a submission consideration as a result of the procedure under § 1.129(a). Thus, under § 1.129(a), if the first submission after final rejection was initially denied entry in the application because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised, then the next action in the application will not be made final. Likewise, if the second submission after final rejection was initially denied entry in the application because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised, then the next action in the application will not be made final. Thus, the fee required by § 1.129(a) has been set at the amount required for filing an application because the procedure provided by the rule is equivalent to the filing of two applications. No new matter can be entered by payment of the fee set forth in § 1.17(r).

82. Comment: Several comments suggested that the fees required for filing a provisional application and those fees required by §§ 1.129(a) and (b) for the transitional procedures should not be greater than the average cost of processing such matters by the PTO. Two comments stated that the fee required by § 1.129(a) is excessive relative to PTO costs.

Response: The fee required for filing a provisional application is set by Public Law 103–465 and the PTO has no discretion with respect to the amount of that particular fee. As to the fee required by § 1.129(a), the procedures relating to the first submission provided by § 1.129(a) is equivalent to the filing of a file wrapper continuation application under § 1.62, and therefore, the fee required with the first submission is appropriately set at the same amount as a filing fee, which is $730.00. The $730.00 fee is subject to a 50% reduction for small entities. The second submission is equivalent to the filing of

a second file wrapper continuation application and the fee for the second submission is appropriately set at the same amount as a filing fee. As to the fee required by § 1.129(b), the procedures set forth in § 1.129(b) permit applicants to retain multiple inventions in a single application rather than having to file multiple divisional applications. The fee for each independent and distinct invention in excess of one is appropriately set at the same amount as the filing fee for a divisional application, which is $730.00. The $730.00 fee is subject to a 50% reduction for small entities.

83. Comment: One comment suggested that the time period for the payment of the $730.00 fee for the transitional after-final practice by extended if applicant files a petition seeking reversal of the examiner's refusal to enter the amendment after final without fee, until one month after an unfavorable decision on the petition.

Response: If an earlier filed petition seeking reversal of the examiner's refusal to enter the amendment after final is granted by the Director finding that the final rejection was premature, but the petition had not been decided by the time the § 1.129(a) fee was due, applicant must submit the § 1.129(a) fee so as to toll the time period for response to the final rejection. Otherwise, the application would be abandoned. Upon granting of such a petition by the Director, the § 1.129(a) fee paid will be refundable to applicant on request. Applications that fall under § 1.129(a) are under final rejection and there is a time period running against the applicant. Applicant must toll that time period by paying the transitional after-final fee set forth in § 1.129(a) and any necessary extension of time fees and Notice of Appeal fee. Section 1.129(a) is being amended to indicate that the submission and the fee set forth in § 1.17(r) may be submitted before the filing of the Appeal Brief and prior to abandonment of the application.

84. Comment: One comment suggested that if it is decided that the transitional after-final practice is made permanent, the PTO should seek legislative authorization to provide reduced fees for small entities.

Response: If it is decided that the transitional after-final practice be made permanent, the PTO will propose legislation to accomplish this change.

85. Comment: Several comments suggested that §§ 1.129 (a) and (b) should apply to all applications regardless of whether they were filed before or after June 8, 1995.

Several comments suggested that the practices set forth in §§ 1.129 (a) and (b) should be made permanent.

Several comments suggested that an applicant should be permitted to have a submission entered and considered after any final rejection upon payment of a fee as set forth in § 1.17(r), not just the first and second final rejections.

Response: The suggestions have not been adopted at this time. However, the PTO is undertaking a project to reengineer the entire patent process. These suggestions will be taken under advisement in that project.

86. Comment: One comment suggested that the PTO make an effort to treat applications in which a submission under § 1.129(a) has been filed on an expedited basis.

Response: Once the submission is filed and the fee set forth in § 1.17(r) is paid the finality of the last PTO action is withdrawn. The filing of the submission and the fee under § 1.129(a) is equivalent to the filing of a continuing application and will be treated in the same fashion and under the same turnaround time frame as a continuing application.

87. Comment: One comment suggested that PTO practice be changed so that a first Office action in a continuing application cannot be made final.

One comment suggested that PTO practice regarding second action final be relaxed.

Response: The suggestions have not been adopted at this time. However, the PTO is undertaking a project to reengineer the entire patent process. These suggestions will be taken under advisement in that project.

88. Comment: One comment stated that in proposed § 1.129, there is no express provision for the finality of the previous rejection to be withdrawn if applicant complies with the proposed rule. It is suggested that the proposed rule state that the finality of the previous action would be withdrawn if applicant complied with the rule when making a first or second submission after a final action.

Response: The suggestion has been adopted.

89. Comment: One comment requested that the PTO clarify whether § 1.129(a) required the first final rejection to be specifically withdrawn and a different final (i.e., one containing a new ground of rejection) rejection made before applicant is entitled to make a second submission.

Response: The final rule provides that the finality of the previous final office action is automatically withdrawn upon the timely filing of the first § 1.129(a) submission and the fee set forth in § 1.17(r). If the first PTO action following the payment of the § 1.17(r) fee is a non-final office action, a further response from applicant will be entered and considered as a matter of right without payment of the fee set forth in § 1.17(r). If the next office action or any subsequent action is made final, the finality of that office action will be automatically withdrawn upon the timely filing of a second § 1.129(a) submission and the fee set forth in § 1.17(r).

90. Comment: One comment suggested that the PTO not permit the first PTO action following the payment of the § 1.17(r) fee to be made final under any circumstances.

Response: The suggestion has not been adopted. The first PTO action following the payment of the § 1.17(r) fee may be made final under the same conditions that a first office action may be made final in a continuing application (see section 706.07(b) of the MPEP). However, it would not be proper to make final a first Office action in a continuing or substitute application where the continuing or substitute application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (1) new issues were raised that required further consideration and/or search, or (2) the issue of new matter was raised. The procedure set forth in section 706.07(b) of the MPEP will apply to examination of a submission considered as a result of the procedure under § 1.129(a).

91. Comment: Several comments suggested that the filing of the first submission under § 1.129(a) within the statutory period for response set in final rejection should toll the running of the six-month statutory period.

Response: The filing of a submission, e.g., an information disclosure statement or an amendment, after a final rejection without payment of the fee set forth in § 1.17(r) will not toll the period for response set in the final rejection. However, § 1.129(a) is being amended to provide in the rule that the finality of the previous Office action is automatically withdrawn upon the filing of the submission and the payment of the fee set forth in § 1.17(r). Thus, the filing of a submission and the payment of the fee set forth in § 1.17(r) and any extension of time fees and Notice of Appeal fee, if they are necessary to avoid abandonment of the application, will automatically toll the period for response set in the final rejection. It must be kept in mind that the provisions of § 1.129 apply only to an application, other than for reissue or

a design patent, that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365(c).

92. Comment: One comment asked (1) whether it would be necessary to file a Notice of Appeal and appeal fee with or after the first submission and fee if the examiner acts on the first submission and before the end of the six months from the date of the final rejection issues (a) a notice of allowance, (b) a non-final action, or (c) a second final rejection; (2) would the Notice of Appeal and fee be due only at the end of the six months from the date of the final rejection regardless of whether the examiner has acted on the submission by then; and (3) if the Notice of Appeal and fee have once been paid following a first final rejection, would a second notice and fee need to be paid if a second final rejection were issued and applicant desired to file a second submission under § 1.129(a).

Another comment suggested that the appeal fee set forth in § 1.17(e) should not be required where the Notice of Appeal is filed with a § 1.129(a) submission and the fee set forth in § 1.17(r).

Response: As to questions (1) and (2) and the second comment, if the first submission and the proper fee set forth in § 1.17(r) are timely filed in response to the final rejection, the finality of the previous rejection will be automatically withdrawn and applicant need not file the Notice of Appeal or the appeal fee. For example, if the first submission and the proper fee set forth in § 1.17(r) were filed on the last day of the six-month period for response to the final rejection, applicant must also file a petition for three months extension of time with the appropriate fee in order to avoid abandonment of the application. In such case, applicant need not file the Notice of Appeal or the appeal fee if the proper fee set forth in § 1.17(r) was timely paid. However, under the same fact situation, if applicant failed to submit the proper fee set forth in § 1.17(r), the finality of the previous rejection would not be withdrawn and the time period for response would still be running against applicant. In such case, a Notice of Appeal and appeal fee must also accompany the papers filed at the six-month period in order to avoid abandonment of the application. The proper fee set forth in § 1.17(r) must be filed prior to the filing of the Appeal Brief and prior to the abandonment of the application.

As to question (3), if the Notice of Appeal and fee have once been paid following a first final rejection and applicant timely files a first submission and the proper fee set forth in § 1.17(r), the finality of the previous final rejection will be withdrawn and the appeal fee paid could be applied against any subsequent appeal. If the examiner issues a non-final rejection in response to applicant's first submission, a further response from applicant will be entered and considered as a matter of right. If any subsequent Office action is made final, applicant may file a second submission along with the proper fee pursuant to § 1.129(a). If the second submission and the proper fee set forth in § 1.17(r) are timely filed in response to the subsequent final rejection, the finality of the previous final rejection will be withdrawn. Any submission filed after a final rejection made in the application subsequent to the fee under § 1.129(a) having been paid twice will be treated as set forth in § 1.116. Applicant may, upon payment of the appeal fee, appeal a final rejection within the time allowed for response pursuant to § 1.191.

93. Comment: One comment questioned whether the ''first submission'' under § 1.129(a) has to be the first response filed after a final rejection or could it include subsequent responses to the same final rejection.

Response: The ''first submission'' under § 1.129(a) would include all responses filed prior to and with the payment of the fee required by § 1.129(a) provided the submission and fee are filed prior to the filing of the Appeal Brief and prior to abandonment of the application.

94. Comment: One comment suggested that § 1.129(a) be changed to permit the procedure to be available up until the filing of an Appeal Brief since it is not uncommon to file an amendment after a Notice of Appeal is filed but before the filing of an Appeal Brief.

Response: The suggestion has been adopted. Section 1.129(a) is being amended to indicate that the submission and the fee set forth in § 1.17(r) must be submitted before the filing of the Appeal Brief and prior to abandonment of the application.

95. Comment: One comment suggested that the transitional after-final practice be available at any time after final, including after the resolution of an appeal unfavorable to applicant in whole or in part.

Response: The suggestion has not been adopted. Section 1.129(a) is being amended to indicate that the submission and the fee set forth in § 1.17(r) must be submitted before the filing of the Appeal Brief and prior to abandonment of the application. The suggestion to extend the period to after the resolution of an appeal unfavorable to applicant in whole or in part has not been adopted because the suggestion would further unduly extend prosecution of the application.

96. Comment: One comment stated that if an examiner must withdraw the finality of the rejection as a result of the transitional provision, the examiner should be credited with two counts in order to be compensated for the additional work.

Response: The examiner credit system is not part of this rulemaking package. However, as part of the Public Law 103–465 implementation plan, some accommodation will be made for the extra work performed.

97. Comment: One comment stated that regarding the transitional after-final practice, the fee should not be required if the only reason is to have the PTO consider recently obtained art.

Response: Under current practice, if applicant submits prior art after final rejection but before the payment of issue fee, the art will be considered if applicant makes the required certification and submits a petition with the required petition fee of $130.00 (see section 609 of the MPEP). If applicant can make the certification, applicant would not have to rely on the transitional after-final procedure to have the prior art considered. In the event that applicant cannot make the certification, then the procedure under § 1.129(a) is available if applicant wishes the PTO to consider the prior art without refiling the application.

98. Comment: One comment suggested that the PTO modify existing restriction practice to make it more difficult for examiners to require restriction, for example, by requiring every restriction requirement to show two-way distinctness and separate status in the art established by means other than reference to the PTO's classification system.

Response: The suggestion has not been adopted. However, the PTO is undertaking a project to reengineer the entire patent process. This suggestion will be taken under advisement in that project.

99. Comment: One comment suggested that the pendency periods required by §§ 1.129(a) and (b) should be 18 months rather than 2-year and 3-year, respectively.

Response: The pendency periods set forth in the rule which establish eligibility for the transitional procedures are set forth in Public Law 103–465.

100. Comment: One comment suggested that § 1.129(a) be amended to

permit prosecution to be reopened after a Notice of Allowance or final rejection upon the filing of a form requesting that prosecution be reopened and payment of the necessary fee.

Response: The procedures set forth in § 1.129(a) are not applicable to amendments filed after a Notice of Allowance. Amendments filed after the mailing of a Notice of Allowance are governed by § 1.312. The procedures set forth in § 1.129(a) are applicable to amendments filed after a final rejection. If applicant submits an amendment after final and the examiner notifies the applicant in writing that the amendment is not entered, § 1.129(a) permits applicant to submit a letter prior to abandonment of the application and prior to the filing of the Appeal Brief, requesting entry of the prior filed amendment along with the payment of the appropriate fee set forth in § 1.17(r). The letter requesting entry of the prior filed amendment would be equivalent to ''a form'' as suggested in the comment.

101. Comment: One comment suggested that the PTO liberalize its current practice under § 1.116 to make it easier for amendments or evidence to be entered and considered after a final rejection.

Response: The suggestion has not been adopted since no change was proposed to § 1.116 in the Notice of Proposed Rulemaking. However, the suggestion will be taken under advisement as part of a comprehensive effort being conducted by the PTO to reengineer the entire patent process. It should be noted that any change to liberalize the current practice under § 1.116 would necessitate increasing fees.

102. Comment: Several comments suggested that the transitional restriction provision be modified to state that no restriction requirement shall be made or maintained in any application pending for three years on the effective date of the legislation. The comment stated that if restriction requirements made prior to April 8, 1995, are permitted to be maintained then applicants will be forced to file divisional applications resulting in the automatic loss of term after June 8, 1995. A heavy penalty will be placed on the chemical, pharmaceutical and biotechnology industries, who have less than 4 months to search through the ancestors of all pending applications and to identify all restriction requirements and to file divisional applications before June 8, 1995. The comment further suggested that the current restriction practice be changed in view of the implementation of the 20-year term.

Response: The suggestion has not been adopted. The two-month date set forth in § 1.129(b)(1)(i) is from the Statement of Administrative Action, which is part of Public Law 103–465. Under section 102 of Public Law 103–465, ''the statement of administrative action approved by the Congress shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.'' The Commissioner does not have any authority to establish rules which are inconsistent with the Act. It is noted that in cases where a restriction requirement was made prior to April 8, 1995, applicant will have sufficient time to file divisional applications prior to June 8, 1995, so as to retain the benefit of the 17-year patent term for those divisional applications.

The PTO is currently reviewing the restriction practice in view of the implementation of the 20-year patent term. It is noted that a change in restriction practice without changes to other fees would have a negative impact on funding needed to operate the PTO.

103. Comment: Several comments suggested that proposed exceptions (1) and (2) in § 1.129(b) ignore the mandatory language of section 532(2)(B) of Public Law 103–465 and should be deleted.

Response: The suggestion has not been adopted. The exceptions referred to are contained in the Statement of Administrative Action, which is part of Public Law 103–465. Under section 102 of Public Law 103–465, ''the statement of administrative action approved by the Congress shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.''

104. Comment: One comment asked whether ''restriction'' under § 1.129(b) apply to election of species under § 1.146.

Response: ''Restriction'' under § 1.129(b) applies to both requirements under § 1.142 and elections under § 1.146.

105. Comment: Several comments requested that clarification be made as to what constitutes ''actions by the applicant'' in § 1.129(b)(1) and specifically, whether a request for extension of time under § 1.136(a) constitutes such ''actions'' by the applicant.

Response: Examples of what constitute ''actions by the applicant'' in § 1.129(b)(1) are: (1) applicant abandons the application and continues to refile the application such that no Office action can be issued in the application, and (2) applicant requests suspension of prosecution under § 1.103(a) such that no Office action can be issued in the application. Extension of time under § 1.136(a) would not constitute such ''actions by the applicant'' under § 1.129(b)(1).

106. Comment: One comment suggested that the one-month period set forth in § 1.129(b) is insufficient to give an applicant time to file a petition under § 1.144 from a restriction requirement. Several comments suggested that § 1.129(b) be amended to permit applicant to challenge the restriction requirement by way of a petition before being required to pay the fees set forth in § 1.17(s).

Response: Section 1.129(b)(2) is being amended in the final rule package to indicate that applicant will be given ''a time period'' to (1) make an election, if no election has been previously made, and pay the fee set forth in § 1.17(s), (2) confirm an earlier election and pay the fee set forth in § 1.17(s), or (3) file a petition under § 1.129(b)(2) traversing the restriction requirement. If applicant chooses not to pay the fee set forth in § 1.17(s), applicant may file a petition under § 1.129(b)(2) requesting immediate review by the Group Director of the restriction requirement. No petition fee is required. A petition under § 1.129(b)(2) rather than under § 1.144 would be more appropriate under the circumstances since a petition under § 1.144 requires the examiner to make the restriction final before the petition can be considered.

107. Comment: One comment suggested that if applicant elects not to pay the fee set forth in § 1.17(s), applicant should be allowed to elect the invention to be examined.

Response: The suggestion has been adopted. Section 1.129(b) is being amended to indicate that if applicant chooses not to pay the fees for the additional inventions, applicant must elect the invention to be examined and the claims directed to the non-elected inventions for which no fee has been paid will be withdrawn from consideration.

108. Comment: One comment suggested that the PTO amend the rules to permit all, or at least several, inventions to be examined in a single application upon payment of an appropriate fee.

Response: The suggestion has not been adopted at this time. However, the

PTO is currently undertaking a project to reengineer the entire patent process. The suggestion will be taken in advisement in this project.

109. Comment: One comment suggested that PTO follow the wording of 35 U.S.C. 121 and only require restriction where an application claims two or more independent and distinct inventions rather than two or more independent or distinct inventions.

Response: In making restriction requirements, the PTO has always followed the wording of 35 U.S.C. 121 to require restriction if two or more independent and distinct inventions are claimed in an application rather than independent or distinct as suggested by the comment. The term ''independent'' includes species and related inventions such as combination/subcombination and process and product. Restriction is proper if these independent inventions are patentably distinct (see section 802.01 of the MPEP).

110. Comment: One comment suggested that the standard for determining whether an application contains independent and distinct inventions should only be the ''unity of invention'' standard used for PCT applications.

Response: The suggestion has not been adopted. The current restriction practice for 35 U.S.C. 111(a) applications is governed by 35 U.S.C. 121 and §§ 1.141, 1.142 and 1.146. The PCT ''unity of invention'' standard only applies to PCT applications and applications filed under 35 U.S.C. 371. The PTO is currently reviewing the restriction practice in view of the implementation of the 20-year patent term. It is noted that a change in restriction practice without changes to other fees would have a negative impact on funding needed to operate the PTO.

111. Comment: One comment suggested that the PTO apply the PCT unity of invention standard as interpreted by the EPO and that § 1.475(b) be amended to permit a broad range of claims in a single application.

Response: The PTO is currently undertaking a project to reengineer the entire patent process. The suggestion will be taken under advisement in this project.

112. Comment: One comment suggested that the PTO examiner should not be permitted to issue a restriction requirement or an election of species requirement if the ISA and the IPEA have found that an application complies with the unity of invention requirement.

Another comment suggested that the PTO consider allowing applicants to retain all claims in a single application when the claims are related, e.g., method and apparatus claims.

Another comment suggested that all species be searched before the first Office action regardless of whether one species is found to be unpatentable.

Another comment suggested that election of species requirements be prohibited.

Response: The suggestions have not been adopted. These issues were not addressed in the Notice of Proposed Rulemaking. However, the PTO is currently undertaking a project to reeingineer the entire patent process. The suggestions will be taken under advisement in that project.

113. Comment: One comment suggested that decisions on whether to issue a restriction requirement be made within two-three months of the application filing date, and, if the requirement is traversed, the examiner should determine within four-five months of the filing date whether to maintain the requirement. Decisions on petitions to withdraw a restriction requirement should be decided within one month.

Response: The suggestion has not been adopted. Current practice dictates that restriction requirements be made at the earliest appropriate time in the pendency of a given application, e.g., in the first Office action. It would be difficult to issue a restriction requirement within two-three months of the application filing date as suggested since a large number of applications are filed with missing parts and applicants are given a time period to submit the missing parts. Furthermore, applications must be processed by the Application Branch and must be screened by Licensing and Review for national security. Petitions to withdraw a restriction requirement should be acted on by the Group Director expeditiously.

114. Comment: One comment argued that the phrases, ''so as to be pending for a period of no longer than 12 months'' and ''under no circumstances will the provisional application be pending after 12 months'', in § 1.139 were repetitious and suggested that one or both of the phrases be deleted.

Response: The suggestion has not been adopted. The statements are included for emphasis.

115. Comment: One comment suggested that § 1.139 clearly state that if the revival petition is filed later than 12 months after filing of the provisional application, then the revival is for the sole purpose of providing copendency for a 35 U.S.C. 111(a) application filed during that 12-month period.

Response: The suggestion has not been adopted. The proposed language is not necessary.

116. Comment: One comment stated that 35 U.S.C. 154(b) as contained in Public Law 103–465 does not give the Commissioner any authority to decide the period of extension. Therefore, proposed § 1.701 is without statutory basis.

Response: 35 U.S.C. 6(a) gives the Commissioner authority to establish regulations not inconsistent with law. Section 1.701 is consistent with 35 U.S.C. 154(b) and furthermore, the Commissioner has the authority under 35 U.S.C. 154(b)(3)(C) to establish regulations to address the standards for determining due diligence.

117. Comment: One comment questioned whether patent term extension under 35 U.S.C. 154(b) is available for patents issuing: (1) Before June 8, 1995, with a 17-year patent term or a 17/20 year patent term; (2) on or after June 8, 1995, on applications filed before June 8, 1995, with a 17-year patent term or a 17/20 year patent term.

Response: None of the patents set forth in the examples are eligible for patent term extension. Under the terms of the statute, patent term extension is only available for patents issued on applications filed on or after June 8, 1995.

118. Comment: Several comments questioned whether a patent issued on a continuing application is entitled to a patent term extension under 35 U.S.C. 154(b) due to interference, secrecy order, or appellate review delays occurring in the examination of the parent application.

Response: If the delay in the parent application contributed to a delay in the issuance of a patent in the continuing application, the patent granted on the continuing application may be eligible for an extension under 35 U.S.C. 154(b).

119. Comment: One comment suggested that the patent term be extended for a period of time equal to the time necessary to revive an application improperly abandoned due to PTO error. Another comment suggested that patent time extension be available for other PTO delays.

Response: The suggestions have not been adopted. Section 154(b) of title 35, United States Code, only permits patent term extension for delays due to interferences, secrecy orders, and/or successful appeals.

120. Comment: One comment suggested that the period of an extension granted under § 1.701 be printed on the face of the patent.

Response: The PTO will publish on the face of the patent any patent term

extension that is granted pursuant to § 1.701.

121. Comment: One comment suggested that the word ''interference'' be inserted before the word ''proceedings'' in § 1.701(a)(1).

Response: The suggestion has been adopted.

122. Comment: One comment stated that the last sentence of § 1.701(b) is confusing because it suggests that patent term extension will be available in cases of terminal disclaimer and that the extension begins on the terminal disclaimer date rather than the original expiration date. This statement is contrary to 35 U.S.C. 154(b)(2) which does not permit any patent term extension for appellate delay if the patent is subject to a terminal disclaimer.

Response: In order to reduce confusion, the last sentence of § 1.701(b) is being amended to state that the extension will run from the expiration date of the patent. The reference to ''terminal disclaimer'' is being deleted.

123. Comment: Two comments stated that if an application involved in an interference proceeding contains uninvolved claims, those uninvolved claims should not be entitled to extension of patent term under proposed § 1.701 because applicant could cancel those uninvolved claims from the application and refile those claims in a continuation application. It is suggested that if an applicant leaves conclusively uninvolved claims (where no § 1.633(c)(4) motion is filed) in the application in interference, applicant does not get the benefit of the extension for any claim.

Response: The suggestion has not been adopted. The statute, 35 U.S.C. 154(b), grants patent term extension to a patent if the issuance of the patent was delayed due to interference proceeding under 35 U.S.C. 135(a). The statute does not exclude applications containing uninvolved claims. The Commissioner does not have the authority to establish regulations which are inconsistent with the law. Therefore, an application involved in an interference which contains uninvolved claims will be entitled to patent term extension if the issuance of the patent was delayed due to interference proceeding under 35 U.S.C. 135(a).

124. Comment: One comment asked whether applicant is entitled to patent term extension regardless of whether an interference involving applicant's application is ultimately declared.

One comment asked if the PTO ends the suspension without declaring an interference, and continued prosecution results in filing of a continuation or divisional application, are such subsequent cases entitled to the extension.

Response: An application will not be suspended unless it is decided that an interference can be declared involving that application. If prosecution of applicant's application is suspended due to an interference not involving applicant's application and an interference involving applicant's application is later declared, applicant will be entitled to patent term extension under § 1.701(c)(1)(ii) for the suspension period and under § 1.701(c)(1)(ii) for the interference period. However, if prosecution of applicant's application is suspended due to an interference not involving applicant's application and if the PTO ends the suspension of the application without declaring an interference involving applicant's application, that application will be entitled to patent term extension under § 1.701(c)(1)(ii). If prosecution results in filing of a continuing application and if the delay in the parent application contributed to a delay in the issuance of a patent on the continuing application, the patent granted on the continuing application may be eligible for an extension under 35 U.S.C. 154(b).

125. Comment: One comment stated that delays in the issuance of a patent can exceed the five-year limit provided for in proposed § 1.701(b). Where the delay was not the fault of the applicant, why should there be this maximum?

Another comment stated that in a biotechnology application, if suspension of the application results in a declared interference, the period of delay calculated under § 1.701(c)(1)(i) will likely consume most of the five-year maximum extension. This renders the value of any time period measured under § 1.701(c)(1)(ii) negligible, thus diminishing the rights of applicant due to the unregulated suspension powers of the PTO.

Response: The five-year limit for patent term extension set forth in § 1.701(b) is required by statute, 35 U.S.C. 154(b).

126. Comment: One comment suggested that § 1.701(c)(1)(i) be amended to state that an application added after an interference is declared is entitled to an extension measured only from the date of redeclaration.

Response: The suggestion has not been adopted. The language in § 1.701(c)(1)(i) is clear that for an application that is added to an interference, that application is entitled to an extension measured from the date of redeclaration of the interference.

127. Comment: One comment stated that § 1.701(c)(1)(ii) does not address the case where a suspended application is added to the interference without the suspension being lifted.

Response: Section 1.701(c)(1)(ii) is being amended to reference the endpoint for the suspension period to the date of termination of the suspension. Where prosecution of an application is suspended due to interference proceedings not involving the application, the suspension is made pursuant to § 1.103(b). When that application is added to an interference, the suspension pursuant to § 1.103(b) will be automatically lifted. The application is entitled to patent term extension for the period of suspension pursuant to § 1.701(c)(1)(ii) and for the period of interference pursuant to § 1.701(c)(1)(i). Under § 1.701(c)(1)(ii), the period of suspension begins on the date the application is suspended and ends on the date the suspension under § 1.103(b) is terminated, which in this case would be the same date as the date of redeclaration of the interference.

128. Comment: One comment suggested that the phrase '', if any,'' in § 1.701(c)(1)(i) and (ii) is unnecessary.

Response: The suggestion has not been adopted. However, § 1.701(c)(1)(i) is being amended for clarity by deleting the phrase ''if any'' after the first occurrence of ''interference'' and by inserting the same phrase after the phrase ''the number of days.''

129. Comment: Several comments suggested that the phrase ''was declared or redeclared'' in § 1.701(c)(1)(i) be changed to—was first declared—.

Response: The suggestion has not been adopted. The language of the rule reads ''with respect to each interference in which the application was involved, the number of days in the period beginning on the date the interference was declared or redeclared to involve the application in the interference.* * *'' An interference may be declared as A vs. B and later redeclared as A vs. B vs. C. Under the rule, the period of extension would be counted, with respect to applications A and B, from the date the interference was declared to involve the applications A and B. With respect to application C, the period of extension would be counted from the date the interference was redeclared to involve the application C. No ambiguity is seen in the language as originally proposed.

130. Comment: One comment suggested that the use of the phrase ''appellate review'' in reference to an action under 35 U.S.C. 145 or 146 is incorrect, since an action under 35 U.S.C. 145 or 146 is not considered as an ''appellate review'' and suggests that § 1.701(a)(3) be amended so that the

introductory phrase reads ''Appellate review by the Board of Patent Appeals and Interferences or review by a Federal court under 35 U.S.C. 141 or 145,* * *.''

Response: The suggestion has not been adopted. The use of the phrase ''appellate review'' in reference to an action under 35 U.S.C. 145 or 146 is technically incorrect. However, Public Law 103–465 provides for extension of patent term for ''delay due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court''. The introductory phrase referred to in the comment uses the exact language found in the statute.

131. Comment: One comment suggested that § 1.701(a) be amended to specify whether extensions for appellate delays are available for reissue applications.

Response: The suggestion has not been adopted. Under 35 U.S.C. 251, the term of a reissue patent is ''for the unexpired part of the term of the original patent.'' Therefore, patent term extension for appellate delays is not available for reissue applications.

132. Comment: One comment suggested that § 1.701(d) be deleted.

Response: The suggestion has not been adopted. Section 1.701(d) sets forth the language found in the statute, 35 U.S.C. 154(b)(3) and further provides a standard for determining due diligence.

133. Comment: Several comments suggested that the lack of due diligence set forth in § 1.701(d)(2) be limited to the acts which occurred during the appellate period (after the filing of a Notice of Appeal) and not during prosecution.

Response: The suggestion has been adopted. Section 1.701(d) is being amended accordingly.

134. Comment: One comment suggested that the rules be made clear that a suspension under § 1.103 does not constitute a lack of due diligence under § 1.701(d)(2).

Response: The suggestion has not been adopted. A request for suspension pursuant to § 1.103(a) during the appellate review period will be considered to be *prima facie* evidence of lack of due diligence.

135. Comment: Several comments stated that the rules permit extensions of time and the filing of informal applications. These acts should not constitute lack of due diligence since the proposed rule defined the standard for determining due diligence is whether the applicant exhibited that degree of timeliness as may reasonably be expected from, and which is ordinarily exercised by, a person. One comment suggested that the Office adopt a gross negligence standard.

Response: The examples of acts that may constitute lack of due diligence set forth in the Notice of Proposed Rulemaking (extensions of time, filing of nonresponsive submissions, and filing of informal applications) are being withdrawn. The suggestion regarding the adoptions of a gross negligence standard has not been adopted. As set forth in § 1.701(d)(2), the standard for determining due diligence is whether applicant exhibited that degree of timeliness as may reasonably be expected from, and which is ordinarily exercised by, a person during the appellate review period.

136. Comment: One comment stated that the PTO list in the rule all circumstances in which an applicant will be considered not to have acted with due diligence.

Another comment suggested that objective criteria for ''diligence'' be set forth in § 1.701(d)(2).

Response: The suggestion has not been adopted. Whether an action by the applicant constitutes lack of due diligence will be determined by the facts and circumstances of each case. Since lack of due diligence is determined on a case-by-case basis, it would not be possible to list all circumstances in the rule. Examples of acts which will constitute prima facie evidence of lack of due diligence are: (1) abandonment of the application during appellate review; and (2) suspension of action under § 1.103(a) during appellate review.

137. Comment: One comment suggested that guidance be provided in the comments to the Notice of Final Rules identifying in what circumstances is a patent issued ''pursuant to an appellate decision reversing an adverse determination of patentability.''

Several comments questioned whether the reversal of all rejections on one of several appealed claims would entitle applicant to an extension under § 1.701(a)(3). Two comments suggested that the rule be redrafted to allow appropriate extension of term where the Board or a court reverses at least ''in part.''

Response: Extension of patent term under § 1.701(a)(3) is applicable if all the rejections of any one claim are ultimately reversed. The rule is clear and no clarification is needed.

138. Comment: One comment stated that § 1.701 does not address the situation where applicant appeals with both allowed and rejected claims. In such case, patent term extension should be available for any claims that were allowed prior to appellate review, if the allowed claims were in the same application, whether or not the decision of the examiner on the rejected claims is ultimately reversed. Applicant should not have to refile the allowed claims and rejected claims in separate cases in order to take advantage of the patent term extension.

Response: If applicant chooses to keep the allowed claims with the rejected claims in the application on appeal, patent term extension pursuant to 35 U.S.C. 154(b)(2) is only available if a patent was issued pursuant to a decision reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review. If the appellate review is not successful, applicant will not be entitled to patent term extension.

139. Comment: One comment questioned whether the phrase ''if the patent is not subject to a terminal disclaimer'' in § 1.701(a)(3) is intended to be limited to those applications in which a terminal disclaimer has actually been filed or encompass those applications in which a double patenting rejection has been made and a terminal disclaimer suggested by an examiner.

Response: The calculation of any applicable extension under § 1.701 will be made prior to the mailing of the Notice of Allowance and Issue Fee Due. At that time, any double patenting rejection would have been resolved and a terminal disclaimer would have been filed if one was required.

140. Comment: One comment stated that § 1.701(d)(1) is inconsistent with 35 U.S.C. 154(b)(2) and (b)(3), because the period of extension for appellate review would be calculated under § 1.701(d)(1) by first subtracting the period of appellate review occurring within three years of the filing date before the five-year limit is imposed. It is suggested that § 1.701 be modified to be consistent with 35 U.S.C. 154(b)(2) which requires the five-year limit to be imposed before the subtraction for appellate review occurring within three years of the filing date.

Response: The suggestion has not been adopted. Section 1.701 is not inconsistent with 35 U.S.C. 154(b)(2) and (b)(3). The period of extension referred to in 35 U.S.C. 154(b)(2) is defined in 35 U.S.C. 154(b)(3). Therefore, one must determine the period of extension in 35 U.S.C. 154(b)(3)(A), then reduce that period by the time determined in 35 U.S.C. 154(b)(3)(B) and (b)(3)(C). Then, according to 35 U.S.C. 154(b)(2), the

resulting time period may not be more than five years.

141. Comment: One comment suggested that the Commissioner identify a senior person who is charged with approving all reductions in extension of patent term rather than leaving the decision to the examiner or the SPE.

One comment questioned who will make the calculation of the period of patent term extension under § 1.701 and whether that calculation can be challenged and by whom.

Response: It is contemplated that the period of patent term extension calculated and any reduction in the extension of patent term will not be made by an examiner. It is noted that the period of patent term extension will be identified in the Notice of Allowance and Issue Fee Due and if applicant disagrees with the period, applicant may request further review by way of a petition under § 1.181. If an error is noted after the patent issues, patentee or any third party may seek correction of the period of patent term extension granted by filing a request for a Certificate of Correction pursuant to § 1.322.

142. Comment: One comment questioned whether a challenge to the period of patent term extension calculated by the PTO under § 1.701 would be required to be made within a fixed period.

Response: No. However, the longer applicant delays filing a petition under § 1.181 challenging the period of extension calculated by the PTO, the less likely any error will be corrected before the patent is issued with the error printed on the patent. If the patent issues with an incorrect period of extension, applicant should file a request for a Certificate of Correction pursuant to § 1.322 instead of a petition under § 1.181.

143. Comment: One comment suggested that § 1.701(d)(2) be amended to require PTO to notify applicant in writing of any intent to reduce the term extension for lack of due diligence, stating the specific basis, and provide applicant with a reasonable opportunity to respond.

Response: The suggestion has not been adopted. The period of patent term extension will be identified in the Notice of Allowance and Issue Fee Due and if applicant disagrees with the period, applicant may request further review by way of a petition under § 1.181.

144. Comment: One comment suggested that a cover sheet for use in recording assignments be included in the final rules package as an addendum.

Response: The suggestion has not been adopted. A sample cover sheet for use in recording assignments was published as Appendix B in the **Federal Register** on July 6, 1992, at 57 FR 29634 and in the Official Gazette on July 28, 1992, at 1140 Off. Gaz. Pat. Office 63 and may be obtained from Assignment Branch.

Other Considerations

This final rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. This final rule has been determined not to be significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these final 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)). The principal impact of these changes is to provide a procedure for domestic applicants to quickly and inexpensively file a provisional application. The filing date of the provisional application will not be used to measure the term of a patent granted on an application which claims the earlier filing date of the provisional application.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in E.O. 12612.

These final rules contain collections of information subject to the requirements of the Paperwork Reduction Act (Act). The provisional application has been approved by the Office of Management and Budget under control numbers 0651–0031 and 0651–0032. The cover sheet is approved under OMB control number 0651–0037. The cover sheet is necessary to expedite the processing of a provisional application and improve quality. Public reporting burden for the collection of information on the cover sheet is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Office of Assistance Quality and Enhancement Division, Patent and Trademark Office, Washington, D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (ATTN: Paperwork Reduction Act Projects 0651–0031, 0651–0032, and 0651–0037).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR Parts 1 and 3 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.1 is amended by adding new paragraph (i) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(i) The filing of all provisional applications and any communications relating thereto should be additionally marked ''Box Provisional Patent Application.''

* * * * *

3. Section 1.9 is amended by revising paragraph (a) to read as follows:

§ 1.9 Definitions.

(a)(1) A national application as used in this chapter means a U.S. application for patent which was either filed in the Office under 35 U.S.C. 111, or which entered the national stage from an international application after compliance with 35 U.S.C. 371.

(2) A provisional application as used in this chapter means a U.S. national application for patent filed in the Office under 35 U.S.C. 111(b).

(3) A nonprovisional application as used in this chapter means a U.S. national application for patent which was either filed in the Office under 35 U.S.C. 111(a), or which entered the national stage from an international

application after compliance with 35 U.S.C. 371.

* * * * *

4. Section 1.12 is amended by revising paragraph (c) to read as follows:

§ 1.12 Assignment records open to public inspection.

* * * * *

(c) Any request by a member of the public seeking copies of any assignment records of any pending or abandoned patent application preserved in secrecy under § 1.14, or any information with respect thereto, must

(1) Be in the form of a petition accompanied by the petition fee set forth in § 1.17(i), or

(2) Include written authority granting access to the member of the public to the particular assignment records from the applicant or applicant's assignee or attorney or agent of record.

* * * * *

5. Section 1.14 is amended by revising paragraph (e) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in secrecy pursuant to paragraphs (a) and (b) of this section, or any papers relating thereto, must

(1) Be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i), or

(2) Include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record.

* * * * *

6. Section 1.16 is amended by revising paragraphs (a) through (g) and by adding new paragraphs (k) and (l) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:

By a small entity (§ 1.9(f)).....$365.00
By other than a small entity 730.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....38.00
By other than a small entity 76.00

(c) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f)).....11.00
By other than a small entity 22.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)).....120.00
By other than a small entity 240.00

(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.9(f)).....65.00
By other than a small entity 130.00

(f) Basic fee for filing each design application:

By a small entity (§ 1.9(f)).....150.00
By other than a small entity 300.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.9(f)).....245.00
By other than a small entity 490.00

* * * * *

(k) Basic fee for filing each provisional application:

By a small entity (§ 1.9(f)).....75.00
By other than a small entity 150.00

(1) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(a)(2)(i)) on a date later than the filing date of the provisional application:

By a small entity (§ 1.9(f)).....25.00
By other than a small entity 50.00

* * * * *

7. Section 1.17 is amended by revising paragraphs (h) and (i), and by adding new paragraphs (q), (r) and (s) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under a section listed below which refers to this paragraph 130.00

§ 1.47—for filing by other than all the inventors or a person not the inventor

§ 1.48—for correction of inventorship, except in provisional applications

§ 1.84—for accepting color drawings or photographs

§ 1.182—for decision on questions not specifically provided for

§ 1.183—to suspend the rules

§ 1.295—for review of refusal to publish a statutory invention registration

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent

§ 1.644(e)—for petition in an interference

§ 1.644(f)—for request for reconsideration of a decision on petition in an interference

§ 1.666(c)—for late filing of interference settlement agreement

§§ 5.12, 5.13 and 5.14—for expedited handling of a foreign filing license

§ 5.15—for changing the scope of a license

§ 5.25—for retroactive license

(i) For filing a petition to the Commissioner under a section listed below which refers to this paragraph 130.00

§ 1.12—for access to an assignment record

§ 1.14—for access to an application

§ 1.53—to accord a filing date, except in provisional applications

§ 1.55—for entry of late priority papers

§ 1.60—to accord a filing date

§ 1.62—to accord a filing date

§ 1.97(d)—to consider an information disclosure statement

§ 1.102—to make application special

§ 1.103—to suspend action in application

§ 1.177—for divisional reissues to issue separately

§ 1.312—for amendment after payment of issue fee

§ 1.313—to withdraw an application from issue

§ 1.314—to defer issuance of a patent

§ 1.666(b)—for access to interference settlement agreement

§ 3.81—for patent to issue to assignee, assignment submitted after payment of the issue fee

* * * * *

(q) For filing a petition to the Commissioner under a section listed below which refers to this paragraph 50.00

§ 1.48—for correction of inventorship in a provisional application

§ 1.53—to accord a provisional application a filing date or to convert an application filed under

§ 1.53(b)(1) to a provisional application

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.9(f)).....365.00
By other than a small entity 730.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.9(f)).....365.00
By other than a small entity 730.00

8. Section 1.21 is amended by revising paragraph (l) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(l) For processing and retaining any application abandoned pursuant to § 1.53(d)(1) unless the required basic filing fee has been paid $130.00

* * * * *

9. Section 1.28 is amended by revising paragraph (a) to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying, any fee precludes payment of the fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a verified statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee. Status as a small entity must be specifically established in each application or patent in which the status is available and desired. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established. A nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application may rely on a verified statement filed in the prior application if the nonprovisional application includes a reference to the verified statement in the prior application or includes a copy of the verified statement in the prior application and status as a small entity is still proper and desired. Once status as a small entity has been established in an application or patent, the status remains in the application or patent without the filing of a further verified statement pursuant to § 1.27 of this part unless the Office is notified of a change in status.

* * * * *

10. Section 1.45 paragraph (c) is revised to read as follows:

§ 1.45 Joint inventors.

* * * * *

(c) If multiple inventors are named in a nonprovisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116. If multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter disclosed in the provisional application and the provisional application will be considered to be a joint application under 35 U.S.C. 116.

11. Section 1.48 is revised to read as follows:

§ 1.48 Correction of inventorship.

(a) If the correct inventor or inventors are not named in a nonprovisional application through error without any deceptive intention on the part of the actual inventor or inventors, the application may be amended to name only the actual inventor or inventors. Such amendment must be diligently made and must be accompanied by:

(1) A petition including a statement of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred;

(2) An oath or declaration by each actual inventor or inventors as required by § 1.63;

(3) The fee set forth in § 1.17(h); and

(4) The written consent of any assignee. When the application is involved in an interference, the petition shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.

(b) If the correct inventors are named in the nonprovisional application when filed and the prosecution of the application results in the amendment or cancellation of claims so that less than all of the originally named inventors are the actual inventors of the invention being claimed in the application, an amendment shall be filed deleting the names of the person or persons who are not inventors of the invention being claimed. The amendment must be diligently made and shall be accompanied by:

(1) A petition including a statement identifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application; and

(2) The fee set forth in § 1.17(h).

(c) If a nonprovisional application discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended pursuant to paragraph (a) of this section to add claims to the subject matter and name the correct inventors for the application.

(d) If the name or names of an inventor or inventors were omitted in a provisional application through error without any deceptive intention on the part of the actual inventor or inventors, the provisional application may be amended to add the name or names of the actual inventor or inventors. Such amendment must be accompanied by:

(1) A petition including a statement that the error occurred without deceptive intention on the part of the actual inventor or inventors, which statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office; and

(2) The fee set forth in § 1.17(q).

(e) If a person or persons were named as an inventor or inventors in a provisional application through error without any deceptive intention, an amendment may be filed in the provisional application deleting the name or names of the person or persons who were erroneously named. Such amendment must be accompanied by:

(1) A petition including a statement of facts verified by the person or persons whose name or names are being deleted establishing that the error occurred without deceptive intention;

(2) The fee set forth in § 1.17(q); and

(3) The written consent of any assignee.

12. Section 1.51 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Commissioner of Patents and Trademarks.

(1) A complete application filed under § 1.53(b)(1) comprises:

(i) A specification, including a claim or claims, see §§ 1.71 to 1.77;

(ii) An oath or declaration, see §§ 1.63 and 1.68;

(iii) Drawings, when necessary, see §§ 1.81 to 1.85; and

(iv) The prescribed filing fee, see § 1.16.

(2) A complete provisional application filed under § 1.53(b)(2) comprises:

(i) A cover sheet identifying:

(A) The application as a provisional application,

(B) The name or names of the inventor or inventors, (see § 1.41),

(C) The residence of each named inventor,

(D) The title of the invention,

(E) The name and registration number of the attorney or agent (if applicable),

(F) The docket number used by the person filing the application to identify the application (if applicable),

(G) The correspondence address, and

(H) The name of the U.S. Government agency and Government contract number (if the invention was made by an agency of the U.S. Government or under a contract with an agency of the U.S. Government);

(ii) A specification as prescribed by 35 U.S.C. 112, first paragraph, see § 1.71;

(iii) Drawings, when necessary, see §§ 1.81 to 1.85; and

(iv) The prescribed filing fee, see § 1.16.

(b) Applicants are encouraged to file an information disclosure statement in nonprovisional applications. See §§ 1.97 and 1.98. No information disclosure statement may be filed in a provisional application.

* * * * *

13. Section 1.53 heading and paragraphs (a) through (e) are revised to read as follows:

§ 1.53 Application number, filing date, and completion of application.

(a) Any application for a patent received in the Patent and Trademark Office will be assigned an application number for identification purposes.

(b)(1) The filing date of an application for patent filed under this section, except for a provisional application, is the date on which: a specification containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75; and any drawing required by § 1.81(a), are filed in the Patent and Trademark Office in the name of the actual inventor or inventors as required by § 1.41. No new matter may be introduced into an application after its filing date (§ 1.118). If all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(i) is filed which sets forth the reasons the delay in supplying the names should be excused. A continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)) may be filed under this section, § 1.60 or § 1.62. A continuation-in-part application may be filed under this section or § 1.62.

(2) The filing date of a provisional application is the date on which: a specification as prescribed by 35 U.S.C. 112, first paragraph; and any drawing required by § 1.81(a), are filed in the Patent and Trademark Office in the name of the actual inventor or inventors as required by § 1.41. No amendment, other than to make the provisional application comply with all applicable regulations, may be made to the provisional application after the filing date of the provisional application. If all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the provisional application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(q) is filed which sets forth the reasons the delay in supplying the names should be excused.

(i) A provisional application must also include a cover sheet identifying the application as a provisional application. Otherwise, the application will be treated as an application filed under § 1.53(b)(1).

(ii) An application for patent filed under § 1.53(b)(1) may be treated as a provisional application and be accorded the original filing date provided that a petition requesting the conversion, with the fee set forth in § 1.17(q), is filed prior to the earlier of the abandonment of the § 1.53(b)(1) application, the payment of the issue fee, the expiration of 12 months after the filing date of the § 1.53(b)(1) application, or the filing of a request for a statutory invention registration under § 1.293. The grant of any such petition will not entitle applicant to a refund of the fees which were properly paid in the application filed under § 1.53(b)(1).

(iii) A provisional application shall not be entitled to the right of priority under § 1.55 or 35 U.S.C. 119 or 365(a) or to the benefit of an earlier filing date under § 1.78 or 35 U.S.C. 120, 121 or 365(c) of any other application. No claim for priority under § 1.78(a)(3) may be made in a design application based on a provisional application. No request under § 1.293 for a statutory invention registration may be filed in a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

(c) If any application is filed without the specification, drawing or name, or names, of the actual inventor or inventors required by paragraph (b)(1) or (b)(2) of this section, applicant will be so notified and given a time period within which to submit the omitted specification, drawing, name, or names, of the actual inventor, or inventors, in order to obtain a filing date as of the date of filing of such submission. A copy of the ''Notice of Incomplete Application'' form notifying the applicant should accompany any response thereto submitted to the Office. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n). Any request for review of a refusal to accord an application a filing date must be by way of a petition accompanied by the fee set forth in § 1.17(i), if the application was filed under § 1.53(b)(1), or by the fee set forth in § 1.17(q), if the application was filed under § 1.53(b)(2).

(d)(1) If an application which has been accorded a filing date pursuant to paragraph (b)(1) of this section does not include the appropriate filing fee or an oath or declaration by the applicant, applicant will be so notified, if a correspondence address has been provided and given a period of time within which to file the fee, oath, or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. A copy of the ''Notice to File Missing Parts'' form mailed to applicant should accompany any response thereto submitted to the Office. If the required filing fee is not timely paid, or if the processing and retention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which neither the required basic filing fee nor the processing and retention fee has been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application; or, if no basic filing fee has been paid, one

year from the filing date to pay the processing and retention fee set forth in § 1.21(l) to prevent disposal of the application.

(2) If a provisional application which has been accorded a filing date pursuant to paragraph (b)(2) of this section does not include the appropriate filing fee or the cover sheet required by § 1.51(a)(2), applicant will be so notified if a correspondence address has been provided and given a period of time within which to file the fee, cover sheet and to pay the surcharge as set forth in § 1.16(l) in order to prevent abandonment of the application. A copy of the ''Notice to File Missing Parts'' form mailed to applicant should accompany any response thereto submitted to the Office. If the required filing fee is not timely paid, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which the required basic filing fee has not been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, cover sheet and to pay the surcharge as set forth in § 1.16(l) in order to prevent abandonment of the application.

(e)(1) An application for a patent filed under paragraph (b)(1) of this section will not be placed upon the files for examination until all its required parts, complying with the rules relating thereto, are received, except that certain minor informalities may be waived subject to subsequent correction whenever required.

(2) A provisional application for a patent filed under paragraph (b)(2) of this section will not be placed upon the files for examination and will become abandoned no later than twelve months after its filing date pursuant to 35 U.S.C. 111(b)(1).

* * * * *

14. Section 1.55 is revised to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a)–(d) and 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.63. The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) must be filed in the case of an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, when specifically required by the examiner, and in all other cases, before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by a petition requesting entry and by the fee set forth in § 1.17(i). If the certified copy filed is not in the English language, a translation need not be filed except in the case of interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner, in which event an English language translation must be filed together with a statement that the translation of the certified copy is accurate. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

(b) An applicant in a nonprovisional application may under certain circumstances claim priority on the basis of one or more applications for an inventor's certificate in a country granting both inventor's certificates and patents. To claim the right of priority on the basis of an application for an inventor's certificate in such a country under 35 U.S.C. 119(d), the applicant when submitting a claim for such right as specified in paragraph (a) of this section, shall include an affidavit or declaration. The affidavit or declaration must include a specific statement that, upon an investigation, he or she is satisfied that to the best of his or her knowledge, the applicant, when filing the application for the inventor's certificate, had the option to file an application for either a patent or an inventor's certificate as to the subject matter of the identified claim or claims forming the basis for the claim of priority.

15. Section 1.59 is revised to read as follows:

§ 1.59 Papers of application with filing date not to be returned.

Papers in an application which has received a filing date pursuant to § 1.53 will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost of any application in which either the required basic filing fee (§ 1.16) or, if the application was filed under § 1.53(b)(1), the processing and retention fee (§ 1.21(1)) has been paid. See § 1.618 for return of unauthorized and improper papers in interferences.

16. Section 1.60 is amended by revising the heading and paragraph (b) to read as follows:

§ 1.60 Continuation or divisional application for invention disclosed in a prior nonprovisional application.

* * * * *

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)) if:

(1) The prior application was a nonprovisional application and a complete application as set forth in § 1.51(a)(1);

(2) Applicant indicates that the application is being filed pursuant to this section and files a true copy of the prior complete application as filed including the specification (with claims), drawings, oath or declaration showing the signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application;

(3) The inventors named in the continuation or divisional application are the same or less than all the inventors named in the prior application; and

(4) The application is filed before the patenting, or abandonment of, or termination of proceedings on the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior complete application. Such statement must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date. If the continuation or divisional application is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application. Except as provided in paragraph (d) of this section, if a true copy of the prior application as filed is not filed with the application or if the statement that the application papers are a true copy is omitted, the application will not be given a filing date earlier than the date upon which the copy and statement are

filed, unless a petition with the fee set forth in § 1.17(i) is filed which satisfactorily explains the delay in filing these items.

* * * * *

17. Section 1.62 is amended by revising paragraphs (a) and (e) to read as follows:

§ 1.62 File wrapper continuing procedure.

(a) A continuation, continuation-in-part, or divisional application, which uses the specification, drawings and oath or declaration from a prior nonprovisional application which is complete as defined by § 1.51(a)(1), and which is to be abandoned, may be filed under this section before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application, or after payment of the issue fee if a petition under § 1.313(b)(5) is granted in the prior application. The filing date of an application filed under this section is the date on which a request is filed for an application under this section including identification of the application number and the names of the inventors named in the prior complete application. If the continuation, continuation-in-part, or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation, continuation-in-part, or divisional application.

* * * * *

(e) An application filed under this section will utilize the file wrapper and contents of the prior application to constitute the new continuation, continuation-in-part, or divisional application but will be assigned a new application number. Changes to the prior application must be made in the form of an amendment to the prior application as it exists at the time of filing the application under this section. No copy of the prior application or new specification is required. The filing of such a copy or specification will be considered improper, and a filing date as of the date of deposit of the request for an application under this section will not be granted to the application unless a petition with the fee set forth in § 1.17(i) is filed with instructions to cancel the copy or specification.

* * * * *

18. Section 1.63 is amended by revising paragraph (a) to read as follows:

§ 1.63 Oath or declaration.

(a) An oath or declaration filed under § 1.51(a)(1)(ii) as a part of a nonprovisional application must:

(1) Be executed in accordance with either § 1.66 or § 1.68;

(2) Identify the specification to which it is directed;

(3) Identify each inventor and the residence and country of citizenship of each inventor; and

(4) State whether the inventor is a sole or joint inventor of the invention claimed.

* * * * *

19. Section 1.67 is amended by revising paragraph (b) to read as follows:

§ 1.67 Supplemental oath or declaration.

* * * * *

(b) A supplemental oath or declaration meeting the requirements of § 1.63 must be filed when a claim is presented for matter originally shown or described but not substantially embraced in the statement of invention or claims originally presented or when an oath or declaration submitted in accordance with § 1.53(d)(1) after the filing of the specification and any required drawings specifically and improperly refers to an amendment which includes new matter. No new matter may be introduced into a nonprovisional application after its filing date even if a supplemental oath or declaration is filed. In proper cases, the oath or declaration here required may be made on information and belief by an applicant other than the inventor.

* * * * *

20. Section 1.78 is amended by revising paragraphs (a)(1) and (a)(2) and by adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application may claim an invention disclosed in one or more prior filed copending nonprovisional applications or international applications designating the United States of America. In order for a nonprovisional application to claim the benefit of a prior filed copending nonprovisional application or international application designating the United States of America, each prior application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior application must be:

(i) Complete as set forth in § 1.51(a)(1); or

(ii) Entitled to a filing date as set forth in § 1.53(b)(1), § 1.60 or § 1.62 and include the basic filing fee set forth in § 1.16; or

(iii) Entitled to a filing date as set forth in § 1.53(b)(1) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(d)(1).

(2) Any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

(3) A nonprovisional application other than for a design patent may claim an invention disclosed in one or more prior filed copending provisional applications. Since a provisional application can be pending for no more than twelve months, the last day of pendency may occur on a Saturday, Sunday, or Federal holiday within the District of Columbia which for copendency would require the nonprovisional application to be filed prior to the Saturday, Sunday, or Federal holiday. In order for a nonprovisional application to claim the benefit of one or more prior filed copending provisional applications, each prior provisional application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior provisional application must be:

(i) Complete as set forth in § 1.51(a)(2); or

(ii) Entitled to a filing date as set forth in § 1.53(b)(2) and include the basic filing fee set forth in § 1.16(k).

(4) Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior provisional application, identifying it as a provisional application, and including the

provisional application number (consisting of series code and serial number).

* * * * *

21. Section 1.83 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.83 Content of drawing.

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box).

* * * * *

(c) Where the drawings in a nonprovisional application do not comply with the requirements of paragraphs (a) and (b) of this section, the examiner shall require such additional illustration within a time period of not less than two months from the date of the sending of a notice thereof. Such corrections are subject to the requirements of § 1.81(d).

22. Section 1.97 is amended by revising paragraph (d) to read as follows:

§ 1.97 Filing of information disclosure statement.

* * * * *

(d) An information disclosure statement shall be considered by the Office if filed after the mailing date of either a final action under § 1.113 or a notice of allowance under § 1.311, whichever occurs first, but before payment of the issue fee, provided the statement is accompanied by:

(1) A certification as specified in paragraph (e) of this section;

(2) A petition requesting consideration of the information disclosure statement; and

(3) The petition fee set forth in § 1.17(i).

* * * * *

23. Section 1.101 is amended by revising paragraph (a) to read as follows:

§ 1.101 Order of examination.

(a) Nonprovisional applications filed in the Patent and Trademark Office and accepted as complete applications are assigned for examination to the respective examining groups having the classes of inventions to which the applications relate. Nonprovisional applications shall be taken up for examination by the examiner to whom they have been assigned in the order in which they have been filed except for those applications in which examination has been advanced pursuant to § 1.102. See § 1.496 for order of examination of international applications in the national stage.

* * * * *

24. Section 1.102 is amended by revising paragraph (d) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(d) A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the petition fee set forth in § 1.17(i).

25. Section 1.103 is amended by revising paragraph (a) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in § 1.17(i). Action will not be suspended when a response by the applicant to an Office action is required.

* * * * *

26. A new, undesignated center heading and new section 1.129 are added to Subpart B—National Processing Provisions to read as follows:

Transitional Provisions

§ 1.129 Transitional procedures for limited examination after final rejection and restriction practice.

(a) An applicant in an application, other than for reissue or a design patent, that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365(c), is entitled to have a first submission entered and considered on the merits after final rejection under the following circumstances: The Office will consider such a submission, if the first submission and the fee set forth in § 1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application. The finality of the final rejection is automatically withdrawn upon the timely filing of the submission and payment of the fee set forth in § 1.17(r). If a subsequent final rejection is made in the application, applicant is entitled to have a second submission entered and considered on the merits after the subsequent final rejection under the following circumstances: The Office will consider such a submission, if the second submission and a second fee set forth in § 1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application. The finality of the subsequent final rejection is automatically withdrawn upon the timely filing of the submission and payment of the second fee set forth in § 1.17(r). Any submission filed after a final rejection made in an application subsequent to the fee set forth in § 1.17(r) having been twice paid will be treated as set forth in § 1.116. A submission as used in this paragraph includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims or drawings and a new substantive argument or new evidence in support of patentability.

(b)(1) In an application, other than for reissue or a design patent, that has been pending for at least three years as of June 8, 1995; taking into account any reference made in the application to any earlier filed application under 35 U.S.C. 120, 121, and 365(c), no requirement for restriction or for the filing of divisional applications shall be made or maintained in the application after June 8, 1995, except where:

(i) The requirement was first made in the application or any earlier filed application under 35 U.S.C. 120, 121 and 365(c) prior to April 8, 1995;

(ii) The examiner has not made a requirement for restriction in the present or parent application prior to April 8, 1995, due to actions by the applicant; or

(iii) The required fee for examination of each additional invention was not paid.

(2) If the application contains more than one independent and distinct invention and a requirement for restriction or for the filing of divisional applications cannot be made or maintained pursuant to this paragraph, applicant will be so notified and given a time period to:

(i) Elect the invention or inventions to be searched and examined, if no election has been made prior to the notice, and pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects;

(ii) Confirm an election made prior to the notice and pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in addition to the one invention which applicant previously elected; or

(iii) File a petition under this section traversing the requirement. If the required petition is filed in a timely manner, the original time period for

electing and paying the fee set forth in § 1.17(s) will be deferred and any decision on the petition affirming or modifying the requirement will set a new time period to elect the invention or inventions to be searched and examined and to pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects.

(3) The additional inventions for which the required fee has not been paid will be withdrawn from consideration under § 1.142(b). An applicant who desires examination of an invention so withdrawn from consideration can file a divisional application under 35 U.S.C. 121.

(c) The provisions of this section shall not be applicable to any application filed after June 8, 1995.

27. Section 1.137 is amended by revising paragraph (c) to read as follows:

§ 1.137 Revival of abandoned application.

* * * * *

(c) In all applications filed before June 8, 1995, and in all design applications filed on or after June 8, 1995, any petition pursuant to paragraph (a) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

* * * * *

28. Section 1.139 is added to read as follows:

§ 1.139 Revival of provisional application.

(a) A provisional application which has been accorded a filing date and abandoned for failure to timely respond to an Office requirement may be revived so as to be pending for a period of no longer than twelve months from its filing date if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. Under no circumstances will the provisional application be pending after twelve months from its filing date. A petition to revive an abandoned provisional application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by:

(1) The required response unless it has been previously filed;

(2) The petition fee as set forth in § 1.17(l); and

(3) A showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) A provisional application which has been accorded a filing date and abandoned for failure to timely respond to an Office requirement may be revived so as to be pending for a period of no longer than twelve months from its filing date if the delay was unintentional. Under no circumstances will the provisional application be pending after twelve months from its filing date. A petition to revive an abandoned provisional application must be:

(1) Accompanied by the required response unless it has been previously filed;

(2) Accompanied by the petition fee as set forth in § 1.17(m);

(3) Accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the provisional application became abandoned; or

(ii) Within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date on which the provisional application became abandoned.

(c) Any request for reconsideration or review of a decision refusing to revive a provisional application upon petition filed pursuant to paragraphs (a) or (b) of this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision.

(d) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (b)(4)(ii) of this section and the time period set forth in paragraph (c) of this section may be extended under the provisions of § 1.136.

29. Section 1.177 is revised to read as follows:

§ 1.177 Reissue in divisions.

The Commissioner may, in his or her discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner upon petition and payment of the fee set forth in § 1.17(i), all the divisions of a reissue will issue simultaneously; if there is any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner orders otherwise.

30. Section 1.312 is amended by revising paragraph (b) to read as follows:

§ 1.312 Amendments after allowance.

* * * * *

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

31. Section 1.313 is amended by revising paragraph (a) to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. Any such petition by the applicant must include a showing of good and sufficient reasons why withdrawal of the application is necessary and, if the reason for the withdrawal is not the fault of the Office, must be accompanied by the fee set forth in § 1.17(i). If the application is withdrawn from issue, a new notice of allowance will be sent if the application is again allowed. Any amendment accompanying a petition to withdraw an application from issue must comply with the requirements of § 1.312.

* * * * *

32. Section 1.314 is revised to read as follows:

§ 1.314 Issuance of patent.

If payment of the issue fee is timely made, the patent will issue in regular course unless the application is withdrawn from issue (§ 1.313), or issuance of the patent is deferred. Any petition by the applicant requesting a deferral of the issuance of a patent must be accompanied by the fee set forth in § 1.17(i) and must include a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

33. Section 1.316 is amended by revising paragraph (d) to read as follows:

§ 1.316 Application abandoned for failure to pay issue fee.

* * * * *

(d) In all applications filed before June 8, 1995, any petition pursuant to paragraph (b) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

* * * * *

34. Section 1.317 is amended by removing and reserving paragraph (d).

§ 1.317 [Amended]

35. Section 1.666 is amended by revising paragraph (b) to read as follows:

§ 1.666 Filing of interference settlement agreements.

* * * * *

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i) and on a showing of good cause.

* * * * *

36. Section 1.701 is added to Subpart F to read as follows:

§ 1.701 Extension of patent term due to prosecution delay.

(a) A patent, other than for designs, issued on an application filed on or after June 8, 1995, is entitled to extension of the patent term if the issuance of the patent was delayed due to:

(1) Interference proceedings under 35 U.S.C. 135(a); and/or

(2) The application being placed under a secrecy order under 35 U.S.C. 181; and/or

(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review.

(b) The term of a patent entitled to extension under paragraph (a) of this section shall be extended for the sum of the periods of delay calculated under paragraphs (c)(1), (c)(2), (c)(3) and (d) of this section, to the extent that these periods are not overlapping, up to a maximum of five years. The extension will run from the expiration date of the patent.

(c)(1) The period of delay under paragraph (a)(1) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:

(i) With respect to each interference in which the application was involved, the number of days, if any, in the period beginning on the date the interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(2) The period of delay under paragraph (a)(2) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:

(i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181;

(ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 1.193 in the application under secrecy order and ending on the date the secrecy order and any renewal thereof was removed;

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order and any renewal thereof was removed; and

(iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) and ending on the date of mailing of the notice of allowance under § 1.311.

(3) The period of delay under paragraph (a)(3) of this section is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

(d) The period of delay set forth in paragraph (c)(3) shall be reduced by:

(1) Any time during the period of appellate review that occurred before three years from the filing date of the first national application for patent presented for examination; and

(2) Any time during the period of appellate review, as determined by the Commissioner, during which the applicant for patent did not act with due diligence. In determining the due diligence of an applicant, the Commissioner may examine the facts and circumstances of the applicant's actions during the period of appellate review to determine whether the applicant exhibited that degree of timeliness as may reasonably be expected from, and which is ordinarily exercised by, a person during a period of appellate review.

PART 3—ASSIGNMENT, RECORDING, AND RIGHTS OF ASSIGNEE

37. The authority citation for 37 CFR Part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6.

38. Section 3.21 is revised to read as follows:

§ 3.21 Identification of patents and patent applications.

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456). An assignment relating to an international patent application which designates the United States of America must identify the international application by the international number (e.g., PCT/US90/01234). If an assignment of a patent application filed under § 1.53(b)(1) or § 1.62 is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended. If an assignment of a provisional application is executed before the provisional application is filed, it must identify the provisional application by name of each inventor and title of the invention so that there can be no mistake as to the provisional application intended.

39. Section 3.81 is amended by revising paragraph (b) to read as follows:

§ 3.81 Issue of patent to assignee.

* * * * *

(b) If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i) of this chapter.

Dated: April 14, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Note—The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3510–16–M

Appendix

Appendix A

PTO/SB/16 (6-95)
Approved for use through 04/11/98. OMB 0651-0037
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PROVISIONAL APPLICATION COVER SHEET

This is a request for filing a PROVISIONAL APPLICATION under 37 CFR 1.53 (b)(2).

Docket Number		Type a plus sign (+) inside this box ->	

INVENTOR(s)/APPLICANT(s)

LAST NAME	FIRST NAME	MIDDLE INITIAL	RESIDENCE (CITY AND EITHER STATE OR FOREIGN COUNTRY)

TITLE OF THE INVENTION (280 characters max)

CORRESPONDENCE ADDRESS

STATE		ZIP CODE		COUNTRY	

ENCLOSED APPLICATION PARTS *(check all that apply)*

☐ **Specification** *Number of Pages* ☐ ☐ **Small Entity Statement**

☐ **Drawing(s)** *Number of Sheets* ☐ ☐ **Other (specify)** ☐

METHOD OF PAYMENT *(check one)*

☐ **A check or money order is enclosed to cover the Provisional filing fees**

☐ **The Commissioner is hereby authorized to charge filing fees and credit Deposit Account Number:** ☐

PROVISIONAL FILING FEE AMOUNT ($) ☐

The invention was made by an agency of the United States Government or under a contract with an agency of the United States Government.

☐ **No.**

☐ **Yes, the name of the U.S. Government agency and the Government contract number are:** _____

Respectfully submitted,

SIGNATURE _____ **Date** / /

TYPED or PRINTED NAME _____ **REGISTRATION NO.** *(if appropriate)* ☐

☐ Additional inventors are being named on separately numbered sheets attached hereto

PROVISIONAL APPLICATION FILING ONLY

Burden Hour Statement: This form is estimated to take .2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Office of Assistance Quality and Enhancement Division, Patent and Trademark Office, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Project 0651-0037), Washington, DC 20503. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Appendix B

PTO/SB/ 01 (6-95)
Approved for use through 06/30/96. OMB 0651-0032
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

DECLARATION FOR PATENT APPLICATION

Docket Number (Optional)

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled _____, the specification of which

is attached hereto unless the following box is checked:

☐ was filed on _____ as United States Application Number or PCT International Application Number _____ and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

Prior ForeignApplication(s)

(Number)	(Country)	(Day/Month/Year Filed)	Priority Claimed
			☐ Yes ☐ No
			☐ Yes ☐ No

I hereby claim the benefit under Title 35, United States Code, § 119(e) of any United States provisional application(s) listed below.

(Application Number)	(Filing Date)

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

(Application Number)	(Filing Date)	(Status -- patented, pending, abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

_____

Address all telephone calls to _____ at telephone number _____

Address all correspondence to _____

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor (given name, family name) _____

Inventor's signature _____ Date _____

Residence _____ Citizenship _____

Post Office Address _____

Full name of second joint inventor, if any (given name, family name) _____

Second Inventor's signature _____ Date _____

Residence _____ Citizenship _____

Post Office Address _____

☐ Additional inventors are being named on separately numbered sheets attached hereto.

Burden Hour Statement: This form is estimated to take .4 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Office of Assistance Quality and Enhancement Division, Patent and Trademark Office, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Project 0651-0032), Washington, DC 20503. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

[FR Doc. 95–9838 Filed 4–24–95; 8:45 am]
BILLING CODE 3510–16–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5194–9]

OMB Approval Number Under the Paperwork Reduction Act; Regulation of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment; and confirmation of effective date.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that the Information Collection Requirements (ICR) contained in the Regulations of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years Interim Final Rule, as published in the **Federal Register** on July 14, 1994, have been approved by the Office of Management and Budget (OMB) and the affected subsection of the regulation is effective April 25, 1995. This document also displays the OMB control number issued under the Paperwork Reduction Act (PRA) in the OMB approval table.

EFFECTIVE DATE: 40 CFR 80.29(e), which contains ICRs, and the amendment to 40 CFR part 9 are effective April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Paul N. Argyropoulos, Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, phone: (202) 233–9004.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the Regulations of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years which appeared in the **Federal Register** on July 14, 1994 (59 FR 35854). The affected regulations are codified at 40 CFR 80.29(c). This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The information collection requirement was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under the Administrative Procedure Act (5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3)) to amend this regulation without prior notice and comment. Also due to the technical nature of this revision, the Agency believes further notice and comment is unnecessary.

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 21, 1994.

Carol M. Browner,

Administrator.

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

PART 9—[AMENDED]

1. Part 9 is amended as follows:

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

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

b. In § 9.1 the table is amended by adding under the indicated heading an entry in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

REGULATION OF FUELS AND FUEL ADDITIVES

40 CFR citation	OMB control No.
* * * * *	
80.29(c)	2060–0308

* * * * *

[FR Doc. 95–10141 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 9 and 80

[FRL–5194–8]

RIN 2060–AD71

OMB Approval Number Under the Paperwork Reduction Act; Regulation of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment; and confirmation of effective date.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that the Information Collection Requirements (ICR) contained in the Interim Requirements for Deposit Control Gasoline Additives Final Rule, as published in the **Federal Register** on November 1, 1994, have been approved by the Office of Management and Budget (OMB) on December 16, 1994. The ICR recrements of this regulation are effective April 25, 1995. This document also displays the OMB control number issued under the Paperwork Reduction Act (PRA) in the OMB approval table.

EFFECTIVE DATE: 40 CFR 80.141(c)–(f), 80.157, 80.158 and 80.160 which contain information collection requirements (ICR) and the amendments to 40 CFR part 9, are effective April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ervin B. Pickell, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 214, Denver, CO 80228, Telephone: (303) 969–6476, FAX: (303) 969–6490.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the Interim Requirements for Deposit Control Gasoline Additives Final Rule, which appeared in the **Federal Register** on November 1, 1994 (59 FR 54678 *et seq.*) The affected regulations are codified at 40 CFR part 80, subpart G. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB numbers. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical

nature of the table, further notice and comment would be unnecessary.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 80

Fuel additives, Motor vehicle pollution.

Dated: April 13, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter 1 is amended as follows:

PART 9—[AMENDED]

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

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

b. The table in § 9.1 is amended by adding under the indicated heading the new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

REGULATION OF FUELS AND FUEL ADDITIVES

40 CFR citation	OMB control No.
* * *	*
80.141(c)–(f)	2060–0275
80.157	2060–0275
80.158	2060–0275
80.160	2060–0275
* * *	*

[FR Doc. 95–10063 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–82–1–6926; FRL–5195–9]

Clean Air Act Section 182(f) NO_X Exemption Petition; Monterey Bay Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the approval of a petition submitted by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) requesting that EPA grant an exemption for the Monterey Bay ozone nonattainment area (Monterey Bay) from the section 182(f) requirement to control major stationary sources of oxides of nitrogen (NO_X) emissions. EPA published a proposed action to approve the Monterey Bay NO_X exemption in the **Federal Register** on December 20, 1994. In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the EPA has determined that additional NO_X reductions from major stationary sources in Monterey Bay would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The approval of this action exempts Monterey Bay from implementing the NO_X requirements for reasonably available control technology (RACT), new source review (NSR), and the applicable general and transportation conformity and inspection and maintenance (I/M) requirements of the CAA. The EPA is finalizing approval of this action under provisions of the Act regarding plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective as of April 12, 1995. The Administrative Procedure Act (APA) 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule ''relieves a restriction''. Since the approval of the section 182(f) exemption for the Monterey Bay area is a substantive action that relieves the restrictions associated with the CAA title I requirements to control NO_X emissions, the NO_X exemption approval may be made effective upon signature by the EPA Administrator.

ADDRESSES: Copies of the petition and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted petition are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, DC 20460.

Monterey Bay Unified Air Pollution Control District, Rule Development Section, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1994, EPA proposed to approve the Monterey Bay NO_X exemption petition, submitted by the MBUAPCD on April 26, 1994. 59 FR 65523. The exemption petition is based on ambient monitoring data and demonstrates that additional NO_X reductions in Monterey Bay would not contribute to attainment of the NAAQS for ozone. A detailed discussion of the background concerning the NO_X requirements and the submitted petition is provided in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA believes that the petition satisfies the applicable EPA requirements and is, therefore, exempting the Monterey Bay area from implementing the NO_X requirements for RACT, NSR, and the applicable general and transportation conformity and I/M requirements [1] of the CAA.

The proposal identifies two NO_X RACT source categories MBUAPCD has identified which encompass the major stationary sources of NO_X in the Monterey Bay nonattainment area.

Rules have been developed and submitted for these two categories, entitled, Rule 431, Emissions From Utility Power Boilers, and Rule 435, Control of Nitrogen Oxides From Kilns. EPA indicated in the NPRM that once the final approval of the NO_X waiver is granted, MBUAPCD would then rescind the two NO_X rules submitted for inclusion into the California SIP. This is not the intention of MBUAPCD with respect to one of these rules. MBUAPCD, in subsequently applying to EPA for redesignation to attainment of the NAAQS for ozone, has indicated that the emissions reductions achieved by rule 431 will form part of its ozone

[1] See ''Scope of Nitrogen Oxides (NO_X) Exemptions,'' from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD–15), to the Air Branch Chiefs, January 12, 1995. ''I/M Requirements in NO_X RACT Exempt Areas'', from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.

maintenance plan. Although NO_X waivers may be granted for areas demonstrating that NO_X reductions do not contribute to attainment of the ozone standard, areas may choose to impose NO_X restrictions on other bases, such as ozone maintenance, visibility protection, PM–10 control, acid deposition, or other environmental protection purposes. MBUAPCD has indicated in its attainment plan its belief that the reductions achieved from rule 431 are needed for maintenance of the ozone standard. Therefore, rule 431 will not be rescinded, but instead will be evaluated for incorporation into the California SIP. However, rule 435 contains language within the rule which will make its applicability void upon final approval of the NO_X waiver.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 65523. EPA received no comments specifically regarding the Monterey Bay exemption petition. However, in August 1994, three environmental groups submitted joint comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments address EPA's policy regarding NO_X exemptions in general and apply to all actions EPA takes regarding section 182(f) NO_X exemptions. Therefore, these comments are addressed below.

Comment: The commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the APA.

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would have needed to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity to the applicable SIP with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

Comment: The commenters stated that the modeling required by EPA guidance is insufficient to establish that NO_X reductions would not contribute to attainment since only one level of NO_X control, i.e., ''substantial'' reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_X reductions will aid or undermine attainment.

Response: The EPA does not believe that this comment is applicable to the Monterey Bay exemption because the demonstration is based on three years of ambient monitoring data and not modeling.

Comment: The commenters provided a comment that three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment, and that EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

Response: The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA

determines that ''additional reductions of (NO_X) would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of (NO_X) would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment: Some commenters provided a comment on all section 182(f) actions that a waiver of NO_X controls is unlawful if such a waiver will impede attainment and maintenance of the ozone standard in separate downwind areas.

Response: The EPA believes that while this comment may be applicable to proposed NO_X exemption actions in other areas, it is not applicable to the Monterey Bay exemption action because the EPA is unaware of, and the comment itself does not specify, any downwind areas for which NO_X transport is of concern.

However, as a result of these comments and comments received regarding transport in NO_X exemption requests for other areas in the United States, EPA reevaluated its position on this issue and decided to revise the previously issued guidance.[2] As described below, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_X exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO_X emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_X emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, certain nonattainment areas in the modeling domain have requested exemptions from NO_X requirements under section 182(f). Some areas requesting an exemption may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment of the national ambient air quality standard for ozone in the area.''[3] As described in section 4.3 of the December 16, 1993 guidance document, EPA believes that the term ''area'' means the ''nonattainment area'' and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_X emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the guidance encourages States to ''consider imposition of the NO_X requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)].''

In contrast, section 4.4 of the guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO_X exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts.

Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, is withdrawing the guidance presently contained in section 4.4. Thus, if there is evidence that NO_X emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_X RACT controls under section 182(f) and, in a separate action, require NO_X controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

Comment: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. The commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and,

[2] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued February 8, 1995 by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards.

[3] There are 3 NO_X exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the ''contribute to attainment'' test described above, and the ''net air quality benefits'' test. EPA must determine, under the latter test, that the net benefits to air quality in an area ''are greater in the absence of NO_X reductions'' from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Consequently, as stated in section 1.4 of the December 16, 1993 EPA guidance, ''[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.''

similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

Response: With respect to conformity, EPA's conformity rules[4 5] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement program (TIP) are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemption for Monterey Bay was submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on this petition until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Comment: The commenters argue that the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with Congress' intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that any one of the following tests is met:

(1) In any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) In nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) In nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

EPA Action

EPA is finalizing this action to exempt Monterey Bay from implementing the NO_X requirements for RACT, NSR, the applicable general and transportation conformity requirements, and I/M.

The EPA believes that all section 182(f) exemptions that are approved should be approved only on a contingent basis. As described in the EPA's NO_X Supplement to the General Preamble (57 FR 55628, November 25, 1992) and further guidance issued by

[4] See ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[5] See ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

EPA,[6] section 182(f) exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. Monterey Bay is required to continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

If, prior to redesignation of the area to attainment, a violation of the ozone NAAQS is monitored in Monterey Bay (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), the section 182(f) exemption would no longer apply, as of the date EPA makes a determination that a violation has occurred. EPA would notify the area that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. If the exemption is revoked, the area must comply with any applicable NO_X requirements set forth in the CAA. Thus, a determination that the NO_X exemption no longer applies would mean that the applicable NO_X NSR, general and transportation conformity, and I/M provisions would immediately be applicable (see 58 FR 63214 and 58 FR 62188) in Monterey Bay.

If Monterey Bay is redesignated to attainment of the ozone NAAQS, NO_X RACT is to be implemented as provided for as contingency measures in the maintenance plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'', and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action relieves requirements otherwise imposed under the CAA and, hence does not impose and Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 25, 1995. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—California

2. Subpart F is amended by adding § 52.235 to read as follows:

§ 52.235 Control strategy for ozone: Oxides of nitrogen.

EPA is approving an exemption request submitted by the Monterey Bay Unified Air Pollution Control District on April 26, 1994 for the Monterey Bay ozone nonattainment area from the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. This approval exempts the area from implementing the oxides of nitrogen (NO_X) requirements for reasonably available control technology (RACT), new source review (NSR), the related requirements of general and transportation conformity regulations, and applicable inspection and maintenance (I/M). The exemption is based on ambient air monitoring data and lasts for only as long as the area's monitoring efforts continue to demonstrate attainment without NO_X reductions from major stationary sources.

[FR Doc. 95–10104 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–W

[6] See ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'', issued by John S. Seitz, Director, Office of Air Quality Planning and Standards (MD–10), May 27, 1994.

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40 CFR Part 81

[CA132–1–6898; 5159–6]

California, Sacramento Ozone Nonattainment Area, Reclassification to Severe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 6, 1991, the Sacramento Metro ozone nonattainment area was classified under the Clean Air Act (CAA) as ''Serious'' with an attainment date of no later than 1999. On November 15, 1994, California submitted the State implementation plan (SIP) for ozone attainment. For the Sacramento Metro ozone nonattainment area, the SIP relied on an attainment date of 2005. On December 29, 1994, the State submitted a revision to the SIP which reaffirmed the 2005 attainment date. EPA construes these submittals to be a voluntary request for a reclassification of the Sacramento Metro area from a ''Serious'' to a ''Severe'' ozone nonattainment area pursuant to section 181(b)(3) of the CAA. EPA is granting California's request for reclassification of the Sacramento Metro area to ''Severe'' in today's document.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Materials relevant to this document can be found in the following locations: EPA Air Docket Section, Attn: Docket No. A–94–09, Environmental Protection Agency (Mail Code—6102), Waterside Mall, Room M–1500, 401 M Street, S.W., Washington, DC 20460, (phone 202–260–7549).

The docket is available for public inspection between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m. EPA may charge a reasonable fee for copying.

A copy of the docket is also available for review at: Regional Administrator, Attention: Office of Federal Planning (A–1–2), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Interested persons may make an appointment with Ms. Virginia Petersen at (415) 744–1265, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Copies of this document and associated documents are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, California

Sacramento Area Council of Governments, 3000 S Street, Suite 300, Sacramento, California

El Dorado County Air Pollution Control District, 2850 Fair Lane Court, Bldg. C, Placerville, California

Feather River Air Quality Management District, 463 Palora Avenue, Yuba City, California

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, California

Yolo-Solano County Air Pollution Control District, 1947 Galileo Court, Suite 103, Davis, California

FOR FURTHER INFORMATION CONTACT: Julia Barrow (415) 744–2434, at the Office of Federal Planning (A–1–2), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105–3901.

SUPPLEMENTARY INFORMATION: On November 6, 1991 (40 CFR 81.305, 56 FR 56694) the Sacramento Metro area was classified as a ''Serious'' ozone nonattainment area under the Clean Air Act (CAA). A ''Serious'' ozone classification requires that the area attain the ozone standard as expeditiously as practicable, but not later than 1999.

On November 15, 1994, California submitted the Statewide SIP for ozone attainment. For the Sacramento Metro ozone nonattainment area, the SIP relied on an ozone attainment date of 2005. On December 29, 1994, the State submitted a revision to the SIP which reaffirmed the 2005 attainment date request for a reclassification of the Sacramento Metro area from a ''Serious'' to a ''Severe'' ozone nonattainment area pursuant to section 181(b)(3) of the CAA.

Section 181(b)(3) of the CAA provides for ''voluntary reclassification'' and states that ''* * * [t]he Administrator shall grant the request of any State to reclassify a nonattainment area in that State * * * to a higher classification'' and that ''* * * [t]he Adminstrator shall publish a notice in the **Federal Register** of any such request and of action by the Administrator granting the request.'' EPA is granting California's request for voluntary reclassification under section 181(b)(3) of the Sacramento Metro area to ''Severe'' in today's document.

List of Subjects in 40 CFR Part 81

Environmental Protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: February 14, 1995.

Carol M. Browner,

Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.305 is amended in the table for California—Ozone by revising the entry for ''Sacramento Metro Area'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	* * *			
Sacramento Metro Area	May 25, 1995	Non-attainment	May 25, 1995	Severe.
* * *	* * *			

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 95–10099 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5196–4]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed New Mexico's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve New Mexico's hazardous waste program revision subject to the authority retained by EPA in accordance with Hazardous and Solid Waste Amendments of 1984. New Mexico's application for the program revision is available for public review and comment.

DATES: This authorization for New Mexico shall be effective July 10, 1995 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on New Mexico's program revision application must be received by the close of business June 10, 1995.

ADDRESSES: Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: New Mexico Environment Department, 1190 St Francis Drive, Sante Fe, New Mexico 87502, and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place,

1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number NM–95–1, should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

B. New Mexico

New Mexico received authorization January 25, 1985, (see 50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (see 55 FR 4604), July 25, 1990 (see 55 FR 28397), December 4, 1992 (see 57 FR 45717), August 23, 1994 (see 59 FR 29734) and December 21, 1994 (see 59 FR 51122). The authorized New Mexico RCRA program was incorporated by reference to the Code of Federal Regulations (CFR), effective December 13, 1993 (see 58 FR 52677). On December 23, 1994, New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

On August 24, 1994, New Mexico promulgated 20 New Mexico Administrative Code (NMAC) 4.1 which adopts the July 1, 1993, version of 40 CFR part 261. Specifically, 20 NMAC 4.1, which became effective 30 days after filing on September 23, 1994, incorporates by reference 40 CFR part 261 at 20 NMAC 4.1.201. This is the version that is referred to in the Attorney General's Statement submitted with this program revision. Also, 20 NMAC 4.1.201 is inclusive of the identification and listing amendments to 40 CFR part 261 promulgated June 13, 1991, at 56 FR 27332; August 18, 1992, at 57 FR 37284; October 15, 1992, at 57 FR 47376; and December 24, 1992, at 57 FR 61492. New Mexico Statutes Annotated (NMSA) 1978, §§ 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993) provides New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

EPA reviewed New Mexico's application and made an immediate final determination that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Consequently, EPA intends to grant authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's proposed final decision until June 9, 1995. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266, and 270 that were published in the **Federal Register** through June 30, 1993. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Toxicity Characteristics Revisions; Technical Corrections, (57 FR 30657–30658) July 10, 1992. (Checklist 108).	New Mexico Statutes Annotated (NMSA) 1978, §§ 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993); Hazardous Waste Management, New Mexico Environmental Improvement Board, 20 New Mexico Administrative Code (NMAC) 4.1.201, Subparts II, V, VI, and VIII, .501, .502, .601, .602 and .801 as amended September 23, 1994, effective September 23, 1994.
2. Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris, (57 FR 37194–37282) August 18, 1992. (Checklist 109).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.101 and 4.1.201 Subparts III, V, VI, VIII and IX, .301, .501, .502, .601, .602, .801 and .901 as amended September 23, 1994, effective September 23, 1994.
3. Coke By-Products Listings, (57 FR 37284–37306) August 18, 1992. (Checklist 110).	NMSA 1978, §§ 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.201 as amended September 23, 1994, effective September 23, 1994.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III, (57 FR 38558–38566) August 25, 1992. (Checklist 111).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.201 as amended September 23, 1994, effective September 23, 1994.
5. Consolidated Liability Requirements, (53 FR 42832) September 16, 1992, (53 FR 33938–33960) September 1, 1988, (56 FR 30200) July 1, 1991 and (57 FR 42832–42844) September 16, 1992. (Checklist 113, 113.1 and 113.2).	NMSA 1978, §§ 74–4–4A(5)(f) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.501, Subparts V, and VI, .502, .601 and .602 as amended September 23, 1994, effective September 23, 1994.

Federal citation	State analog
6. Burning of Hazardous Waste in Boilers and Industrial Furnaces, Amendment IV, (57 FR 44999–45001) September 30, 1992. (Checklist 114).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.101, Subparts I, II, V, VI and VII, .102, .201, .501, .502, .601, .602 and .701 as amended September 23, 1994, effective September 23, 1994.
7. Chlorinated Toluene Production Waste Listing, (57 FR 47376–47386) October 15, 1992. (Checklist 115).	NMSA 1978, §§ 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.201 as amended September 23, 1994, effective September 23, 1994.
8. Hazardous Soil Case-By-Case Capacity Variance, (57 FR 47772–47776) October 20, 1992. (Checklist 116).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.801 as amended September 23, 1994, effective September 23, 1994.
9. Toxicity Characteristic Amendment, (57 FR 23062–23063) June 1, 1992. (Checklist 117B).	NMSA 1978, §§ 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.201 Subparts II, V, VI, and VIII .201, .501, .502, .601, .602 and .801 as amended September 23, 1994, effective September 23, 1994.
10. Liquids in Landfills II, (57 FR 54452–54461) November 18, 1992. (Checklist 118).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.101, Subparts I, II, V, and VI, .102, .501, .502, .601, and .602 as amended September 23, 1994, effective September 23, 1994.
11. Wood Preserving; Amendments to Listings and Technical Requirements, (57 FR 61492–61505) December 24, 1992. (Checklist 120).	NMSA 1978, §§ 74–4–4A, 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.201 and 4.1.301, Subparts II, III, V, and VI, .201, .501, .502, .601, and.602 as amended September 23, 1994, effective September 23, 1994.
12. Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance, (58 FR 28506–28511) May 14, 1993. (Checklist 123).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.801 as amended September 23, 1994, effective September 23, 1994.
13. Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated, (58 FR 29860–29887) May 24, 1993. (Checklist 124).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. Pamp. 1993); 20 NMAC 4.1.801 as amended September 23, 1994, effective September 23, 1994.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that EPA will enforce under section 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 17, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–10143 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7136

[OR–943–1430–01; GP5–083; OR–49219]

Withdrawal of Public Lands for the Galice Creek Recreation Area; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 290.02 acres of Revested Oregon and California Railroad Grant Lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Galice Creek Recreation Area located in Josephine County. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the significant historic and recreational values along Galice Creek:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 34 S., R. 8 W.,
Sec. 35, S½SE¼SE¼.
T. 35 S., R. 8 W.,
Sec. 2, lots 7 to 14, inclusive, and lots 16, 17, and 19, N½SW¼NE¼, SE¼NW¼, and NW¼SW¼;
Sec. 3, SE¼NE¼SE¼ and E½SE¼SE¼.

The areas described aggregate 290.02 acres in Josephine County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: April 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–10081 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–33–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 93–24, FCC 95–51]

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; ITFS Filing Window

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order adopts a window filing procedure for the processing of applications for new Instructional Television Fixed Service (ITFS) stations and major changes to existing stations. It further adopts rules affecting the four-channel rule, receive site interference protection, the protected service area, and other aspects of ITFS operation. The Report and Order responds to the comments received in response to the Notice of Proposed Rulemaking in this proceeding. Notice of Proposed Rulemaking in MM Docket No. 93–24, (Notice), Order and Further Notice of Proposed Rulemaking in MM Docket No. 93–24 (Further Notice). The action is required to hasten ITFS and wireless cable service to the public by streamlining the processing of ITFS applications.

EFFECTIVE DATE: Upon approval of the Office of Management and Budget of a modified FCC Form 330 to effectuate the modifications approved in this Report and Order. The FCC will published a document announcing the effective date in the **Federal Register** when OMB approval is imminent.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Policy and Rules Division, (202) 739–0773.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket No. 93–24, adopted and released on February 7, 1995. The complete text of this Report and Order is available for inspection and copying in the FCC Reference Center (room 239) at the Federal Communications Commission, 1919 M St., NW, Washington, DC 20554, and may also be purchased from the Commission's copying contractor, International Transcription Service, at (202) 857–3800, 2100 M St., NW, Suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. By this Report and Order, the Commission adopts rules that will increase the efficiency of our processing of applications for new ITFS stations, major amendments to such applications, and major changes to existing stations. The Commission also considers additional proposals intended to increase the efficiency, and curtail potential abuse, of the application processes.

2. During the past decade, applicants for new ITFS stations or major changes in existing stations have been subject to an A/B cut-off procedure. This procedure involves placing the first application(s) accepted for filing and determined to be substantially complete on a public notice called an ''A'' cut-off list. This list notifies the public that the application has been accepted and gives interested parties 60 days to file competing applications or petitions to deny. An applicant placed on the ''A'' cut-off list is required to make any major changes to its proposal before the end of the ''A'' cut-off period. After the ''A'' period expires, the staff places all substantially complete applications which were filed during that period and found to be mutually exclusive with any listed ''A'' application on a ''B'' list. This list notifies the public that the specified applications have been accepted for filing, and it provides 30 days for the filing of petitions to deny or minor amendments to those applications.

3. The telecommunications environment has changed substantially since 1985, when the Commission instituted this procedure. Also, in more than 90% of recently filed applications, ITFS licensees plan to lease their excess channel capacity to wireless cable operators, who almost always pays for the construction of the ITFS facilities. These changes have fostered a substantial increase in the rate of applications filed for new ITFS stations or major changes in existing stations, creating a significant backlog of applications. Therefore, in the Notice of Proposed Rulemaking in this proceeding, 58 FR 12011 (March 2, 1993), we proposed a filing window procedure for the acceptance of applications, to allow us to better control the flow of applications and to improve processing efficiency.

4. Pursuant to our proposal, we would accept applications for new facilities and applications for major changes in existing facilities only during limited periods (or ''windows''). We would place applications filed in the window that were not mutually exclusive with any other application, and that were found to be acceptable for filing, on a proposed grant list. We would then provide the immediately following 30 days for the submission of petitions to deny. Uncontested applications would then be granted, if in the public interest. With regard to mutually exclusive applications, we would similarly give 30-day Public Notice for the submission of petitions to deny. Thereafter, we would evaluate those applications under the existing comparative selection process. Any applications currently tendered but not yet placed on an ''A'' cut-off list would be treated as having been filed and cut off as of the close of the first filing window.

5. Currently, simply to allow the release of an ''A'' cut-off list, each application must undergo a substantive engineering analysis upon filing. No applications are granted or denied in this stage of processing. Subsequently, after the ''B'' cut-off period, each

application undergoes a second technical analysis in order to determine whether it is grantable. Because each of these analyses requires significant resources, eliminating the duplicative step would substantially improve processing efficiency.

6. The Commission concludes that a window filing system, as enhanced by an electronic filing and processing system as proposed in our outstanding MDS rulemaking proceeding, 59 FR 63743 (Dec. 9, 1994), would serve the public interest. A window filing procedure would allow us to better control the flow of applications and it would prevent speculators from filing against applicants that had appeared on an ''A'' cut-off list.

7. A 60-day Public Notice period before each filing window will provide potential applicants adequate notice and opportunity to prepare their applications. As most commenters observe, this is the same period within which parties currently have to file an application in response to an ''A'' cut-off list. The window shall remain open for at least five business days. This period, when combined with the 60-day public notice, will provide all potential applicants time to prepare their applications.

8. Potential inefficiencies caused by the submission of a large number of applications during a national (as opposed to a regional) window are significantly diminished by our likely adoption of the electronic filing system for ITFS applications. A regional window would unfairly require educators not located within the relevant area to delay their educational plans. Finally, a national window will allow all interested parties to commence or continue their ITFS and MDS plans as soon as possible. This will provide the certainty of an imminent filing opportunity to all wireless cable entities, not just those within a restricted geographic area.

9. *Frequency.* Some commenters support a fixed schedule, arguing that this would allow educators to plan their proposals in advance of the Public Notice. They also advocate the non-discretionary opening of a window at least once each quarter, asserting that frequent filing periods are necessary to avoid unduly delaying the licensing of ITFS facilities that are essential to the growth of the wireless cable industry. However, we have never before utilized a window filing system with ITFS, and we therefore believe that we should take a more cautious approach as we structure the window filing system. The rate of the submission of applications could vary significantly in the future, and a fixed requirement could quickly and unpredictably become counterproductive or impracticable to meet. Also, we intend to open filing windows as frequently as is consistent with our goals of efficient and expeditious processing.

10. *Amendments.* Some commenters propose that, after a filing window closes, the Commission should prohibit amendments that demonstrate eligibility, improve comparative standing, or seek rule waivers. Currently, they claim, many applicants impose an unnecessary burden on the Commission by filing such amendments, such as requests for waiver of the four-channel-per-market rule, § 74.902(d) of the Commission's rules, 47 CFR 74.902(d).

11. We agree that amendments that pertain either to improving comparative standing or to establishing eligibility, as set forth in §§ 74.913(b) and 74.932(a) of the Commission's Rules, respectively, 47 CFR 74.913(b) and 74.932(a) should not be filed outside the window period. Similarly, we shall prohibit the filing of amendments to a facility's proposed technical operations, including amendments to add any receive sites, outside the window. Such engineering amendments often require a time-consuming re-analysis by the staff of the amendment's effects on other applications and thus delay the processing of all pending applications. However, with the two exceptions noted above, such delay is not inherent in non-engineering amendments, including requests for waiver of the four-channel rule, and we will consequently permit their filing.

12. We make a narrow exception to the window filing system. NTIA rules require a party seeking a grant to have already filed its application with the Commission, and those requests are subject to an annual deadline. Accordingly, in order not to obstruct these grants, we shall allow the tendering of applications that rely upon NTIA funding during the 30 days preceding the annual deadline. They shall be considered as having been filed during the current or immediately subsequent window, whichever is appropriate.

13. In response to several commenters, we decline generally to exempt the filing of major change applications from the window filing process, and, as discussed above, we similarly decline to exempt amendments with similar effects. By definition, such changes can substantially impact both existing and proposed facilities. Accordingly, for the purpose of the window filing procedure, they should be treated the same as applications for new facilities. However, consistent with existing practice, we shall continue to make a narrow exception for amendments to pending applications that would resolve mutually exclusive applications without creating any additional interference. We will accept such amendments at any time, and we shall provide a 30-day period for the submission of petitions to deny those amendments. We believe that this will most efficiently bring new or improved service to the public. Further, to encourage market settlements, we shall now allow licensees of existing facilities to submit at any time applications for major changes, as long as the changes are essential components of a settlement involving mutually exclusive applications.

14. The Commission declines to adopt several other exceptions that the commenters propose. These rules would significantly disrupt the new window filing system, while promoting no public interest that is not already being served by the filing procedure or other ITFS rules.

Proposals to Improve the Application Process

15. As argued by the commenters, and noted in the *Further Notice,* the goals of the proposed window filing procedure could be maximized if we at the same time enacted additional rules that would increase its efficiency. Therefore, we set forth several proposals, many initially advanced by the commenters, that were intended to improve service to the public or otherwise enhance processing efficiency. Our analysis of each of the proposals will be affected by two factors. First, as noted above, is the proposed electronic filing and processing system for ITFS applications, which would diminish the negative impact that a large number of applications has had on our processing in the past. Second, implementation of the proposals adopted herein and strict enforcement of our existing rules will, we believe, eliminate many of the inefficiencies and alleged abuses of the existing processing system.

Financial Qualifications

16. *Proposal.* Currently, applicants are required to certify their financial ability or their reliance upon NTIA funding. In response to the *Notice,* two commenters proposed to require applicants or their prospective wireless cable lessees to submit with their applications proof of their financial ability to construct. In the *Further Notice,* 59 FR 35665 (July 13, 1994) we postulated that such a

requirement might deter a significant number of ITFS speculators. We also asked whether we should require separate financial documentation for each station applied for, and whether we should require the wireless cable lessee to submit the documentation when it is paying for construction of the facilities.

17. The record does not indicate that our reliance on applicant certification has been ill-placed. Further, we believe that the submission of detailed financial information would in practice neither increase processing efficiency nor deter abuse. Collecting the data would impose significant costs on the wireless cable lessee, regardless of whether the supporting documents were kept on hand by the educator or submitted to the Commission. We believe that a sound analysis of all of the incoming detailed financial submissions would consume a great deal of the staff's time, severely slowing the rate of processing. Conversely, any reliance on the documents without our own rigorous independent analysis would enable us to detect only a small proportion of potential abuse.

18. A financially unqualified educator would generally not be able to complete construction within the prescribed period. Because that educator would then need an extension of time within which to construct, it would have to submit an appropriate application to the Commission, explaining the reasons for its delay in construction. Thus, we already have a process in place by which we can monitor and assess ITFS licensees' progress in constructing their authorized facilities and forestall any dilatory conduct on their part. Should it become necessary in the future, we can revise this process accordingly.

Application Caps

19. We now address two proposals, raised in response to the Notice by the Educational Parties: (1) To impose a cap of 25 applications associated with the same wireless cable entity, including any entity with direct or indirect common ownership or control; and (2) to limit an individual nonlocal ITFS entity to filing no more than three to five applications during a window. To support this restriction, the Educational Parties argued that nonlocal applicants often work with wireless cable entities as frequency speculators. The overwhelming majority of interested commenters oppose the adoption of either type of cap.

20. To suddenly impose limits on the number of applications that particular parties may be affiliated with would slow both ITFS and wireless cable development. Further, it would artificially constrain MDS operators' business decisions as to the number of ITFS channels needed to establish economically viable wireless cable operations. Also, we can deter the speculation complained of by the less restrictive process of analyzing construction extension applications, as noted above.

Assignment of Unbuilt Facilities

21. In the Further Notice, we proposed to formalize our current practice of limiting the allowable consideration for the assignment of authorizations for unbuilt ITFS facilities to out-of-pocket expenses, as we do with broadcast construction permits. Our stated goal was to diminish the incentive of frequency speculators to submit applications for authorizations that they intend to later assign for profit. Every commenter addressing this issue supports the proposal, agreeing that it would help deter abuse. We agree that this limitation, applicable to broadcast construction permits, will have similar deterrent effects on frequency speculation in the ITFS service, and we shall therefore adopt it.

Excess Capacity Lease Terms

22. *Proposal and Comments.* Our existing policy does not authorize an educator to execute a lease agreement the term of which extends beyond the end of the educator's license term. Consequently, depending on how many years remain in the term, there may be situations in which our policy would prohibit a lease agreement to extend beyond one or two years. At most, MDS operators can have contractual access to ITFS channels for no more than ten years, the length of a full license period. Some commenters propose that we modify our policy to allow parties to negotiate lease agreements whose terms extend beyond the end of the license term, to demonstrate to potential investors their long-term channel access. The proposal is unopposed.

23. *Discussion.* The wireless cable industry requires substantial equity investment in order to become a viable competitor in the video marketplace. However, potential financiers are likely to exercise caution before investing in an MDS system, where there is uncertain long-term availability of the ITFS channels that provide the basic capacity for that system. Authorizing lease agreements that extend beyond the end of the license term would reduce the anxiety of potential investors that the MDS entity would shortly lose four channels, crippling the entire system. The increased confidence of investors will significantly accelerate the development of the wireless cable industry and provide competition to wired cable. Hence, we are revising our policy to permit an educator, if it chooses, to execute a 10-year lease agreement without regard to the duration of the educator's current license term. ITFS lease agreements that extend beyond the end of the license term must note that such an extension is contingent on the renewal of the educator's license.

Application of the Four-Channel Rule

24. *Proposal.* We seek to provide as many educators as possible with the opportunity to operate ITFS systems that meet their educational needs. Consequently, the four-channel limitation rule generally limits an ITFS licensee to four channels for use in a single area of operation. However, we have never clearly and formally defined what constitutes an ''area of operation.'' The Further Notice proposed to adopt the staff's informal policy of considering a single area of operation for this purpose to extend no farther than 20 miles from the transmitter site. Many commenters supported such a mileage-based proposal, while others preferred one based on predicted interference.

25. *Discussion.* We adopt the 20-mile standard. Our experience has demonstrated that this standard is efficient and easily understood and implemented. Determining a station's area of operation by use of the interference approach would require a considerable amount of technical analysis by the staff. As a consequence, adoption of this proposal could inordinately slow processing and delay service to the public. We recognize that any mileage standard will be imprecise, because there will always be educators that serve sites beyond the designated distance. However, the bright-line test we are adopting today has the important advantage of being easy for applicants to comprehend and apply. Further, the Commission staff can process applications far more efficiently using this standard. Moreover, staff, educators, and wireless cable entities are extremely familiar with this standard, having utilized it for a number of years.

Protected Service Areas

26. *Proposal.* The Further Notice also solicited comment on a proposed change in the application of protected service areas for wireless cable lessees. Currently, we provide a 15-mile interference protection for a service area regardless of receive site locations, but solely at the request of the ITFS

applicant or licensee. The Further Notice observed that an applicant for new facilities often requests and receives interference protection that restricts an existing licensee lacking such protection from pursuing certain modifications to its facilities. At the same time, an existing facility that has not requested such protection, upon learning that an application for a nearby operation has been filed, often requests interference protection and possibly obstructs the new applicant. We therefore proposed to apply interference protection only prospectively, making it effective solely with regard to applications filed after the protection request. We asked commenters whether our proposal would sufficiently diminish the disruption and delay resulting from the current system. We also asked commenters to address a specific application of the proposed rule: If two applications are (1) submitted during the same filing window, (2) otherwise grantable, and (3) mutually exclusive only because both applicants request a protected service area, we proposed to consider them as mutually exclusive. Most commenters addressing the proposal express support.

27. *Discussion.* We conclude that the public interest will be served by adoption of the proposal to apply protected service area protection only prospectively. Adoption of the proposal will diminish disruption to existing and proposed facilities. Only one commenter expressed opposition to the proposed specific application of the rule involving mutual exclusivity, and we shall adopt it, with a slight exception. There is no public interest benefit in protecting an uninhabitable area. To do so would needlessly restrict neighboring facilities, unduly depriving the area of both ITFS and wireless cable programming. Thus, if an applicant shows that interference will occur solely over water, we shall not consider the applications to be mutually exclusive. However, in order to avoid future conflicting interpretations and confusion, we will not extend the exception to cover any area in which no subscribers or potential subscribers would be affected by the interference.

Receive Site Interference Protection

28. *Proposal.* The Commission's rules currently provide interference protection to an educator's receive sites, regardless of their distance from the transmitter. The Further Notice cited instances in which interference protection was requested for receive sites apparently beyond an educational institution's reasonable coverage area. We stated in the Further Notice that such requests could be an abuse of our processes, designed to artificially increase the service area of the wireless cable lessee. We also opined that eliminating this practice would significantly increase the efficiency of our processing of applications, thereby hastening service to the public. We tentatively concluded that an educational institution is generally unlikely to reasonably serve a receive site located more than 35 miles from the transmitter. Thus, absent a showing of unique circumstances, we proposed to protect only those receive sites 35 miles or less from the transmitter. Further, we proposed that an applicant not be able to claim basic eligibility for a license by use of any receive site more than 35 miles from the transmitter. With regard to the 35-mile standard generally, the commenters are nearly evenly divided.

29. *Discussion.* We acknowledge the concerns of some commenters that educators may at times serve receive sites beyond the proposed boundary. In fact, however, under the proposed rule, a licensee could protect two receive sites that were as far as 70 miles apart, depending on the location of the transmitter. Thus, we find that the 35-mile standard is not unduly restrictive, and we adopt the proposal as it regards both interference protection and basic eligibility for receive sites not more than 35 miles from the transmitter. However, we will waive the rule for a particular site if an applicant can demonstrate that it is located within the educator's reasonable coverage area.

Major Modifications

30. *Proposal.* We turn now to our proposal to reclassify certain types of modifications to existing ITFS facilities. As stated in the Further Notice, we have classified these as either major or minor, attaching different procedural rules to each. In the Further Notice, we expressed our belief that our consideration of certain changes as minor does not realistically take into account the impact that they would have on the facilities in question, nearby facilities, or proposed facilities. Consequently, we proposed to reclassify as a major change any application involving: (1) Any polarization change; (2) the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the application; (3) an increase in the EIRP in any direction by more than 1.5 dB; (4) an increase of 25 feet or more in the transmitting antenna height; or (5) any change that would cause interference to any previously proposed application or existing facility. We additionally proposed to formalize our policy of considering proposals to relocate a facility's transmitter site by ten miles or more as a major change. We also proposed to exempt from the new rule any change that would resolve mutually exclusive applications without creating new frequency conflicts. Most of the commenters that addressed this issue generally supported the proposal. Also, the supporting comments assert that the adoption of the MDS modification rules would be desirable, due to the technical and regulatory relationship that exists between the two services.

31. *Discussion.* Our experience, as supported by many of the comments, warrants the need to modify the current classification system to increase processing efficiency, and we do not believe that the reclassification of certain amendments as major will diminish processing efficiency. Also, adoption of the MDS classification system would not be appropriate. Its definition of a major change is significantly broader than that previously used or now adopted for ITFS. However, the MDS rolling one-day filing window is structured to accommodate such an expansive definition, and it does not significantly restrict the submission of applications to change existing facilities. The ITFS window filing system, on the other hand, is not compatible with such an expansive classification that would needlessly restrict the filing of many ITFS technical modifications. Thus, we shall classify as major any application involving: (1) Any polarization change; (2) an increase in the EIRP in any direction by more than 1.5 dB; (3) an increase of 25 feet or more in the transmitting antenna height; and (4) relocation of a facility's transmitter site by ten miles or more. We shall, however, accept such applications at any time, if their grant would resolve mutually exclusive applications without creating new conflicts. Adoption of the proposal will significantly expedite the processing of ITFS applications.

32. We do not incorporate into the new rule two types of changes that we had earlier listed: (1) The addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the application; and (2) any change that would cause interference to any previously proposed application or existing facility. By eliminating the cut-off system, the window filing system will prevent parties from requesting changes that are mutually exclusive with a tendered but not yet cut-off application.

Reasonable Assurance of Receive Sites

33. *Proposal.* The Further Notice requested comment on how best to ensure the accuracy of each applicant's list of receive sites. We seek to deter applicants from listing receive sites that have in fact not agreed to participate in the proposed ITFS system. We therefore proposed requiring a letter of assurance from the applicant, listing each receive site's contact person, title, and telephone number. Most interested commenters support a stricter requirement than we proposed, and two commenters oppose the proposal in any form. Supporters argue that for adequate deterrence, we should require a verification letter from an authorized official of each receive site listed in an application.

34. *Discussion.* To better ensure the accuracy of receive site lists submitted both by local and nonlocal applicants, we adopt a modified version of the proposal. Processing efficiency will be enhanced because the additional data would allow for rapid confirmation of a site's participation. However, requiring a separate letter of verification from each receive site would involve the submission of potentially dozens of separate letters. We believe, though, that we can expedite processing to the same degree on the application form: where we already ask for information about each of the applicant's receive sites, we shall simply add a column asking for a contact person's name, title, and telephone number. The contact person should be the person (or one of the people) responsible for implementation of the ITFS program at that receive site.

Accreditation of Applicants

35. *Proposal.* While applicants seeking to construct a new ITFS station must indicate their accreditation or that of the schools or other institutions that intend to utilize the proposed ITFS service, we noted in the Further Notice that the extent to which the specified receive sites are being utilized by students from accredited institutions is not called for. Accordingly, we proposed to require applicants to state whether and by whom each listed receive site is accredited. We also asked whether having only one proposed receive site out of many as accredited defeats the fundamental purpose of ITFS: To serve the educational needs of accredited institutions. Thus, we invited commenters to address whether we should require a majority of receive sites to be accredited in order for the application to be grantable, or if we should deny interference protection for any unaccredited receive site. The proposed changes are generally opposed by the commenters. Many of them argue that receive sites are increasingly being used for distance learning without regard to whether they are accredited.

36. *Discussion.* The record does not demonstrate that serving one accredited receive site among other unaccredited receive sites is incompatible with serving the formal, for-credit educational needs of students enrolled at accredited institutions, and we therefore decline to adopt either proposal. To do otherwise would artificially restrict those enrolled students' accessibility to formal ITFS educational programming, while depriving others of worthwhile programming, such as in-service training and instruction in special skills and safety programs. As most commenters note, while the essential purpose of the ITFS service is to provide formal educational programming to students enrolled in accredited schools, colleges and universities, the Commission has long recognized the value of transmitting ''other visual and aural educational, instructional and cultural material to selected receiving locations * * *'' 47 CFR 74.931(a)–(b). We find no evidence on the record that persuades us to now significantly alter the existing relationship between the provision of formal, for-credit educational ITFS programming and the offering of other educational, instructional, and cultural material, Indeed, we reaffirm our commitment to our longstanding objective, one that permits ITFS licensees to transmit educational and cultural programs for use in other than a classroom setting or to persons other than students enrolled at accredited institutions. However, we take this opportunity to modify and make clearer our requirements regarding the need for further specification with respect to the accreditation of the parties utilizing the proposed ITFS services.

37. To attain eligibility, an ITFS applicant must, among other things, be accredited in its own right and serve its own students or serve accredited institutional or governmental organizations. It has come to our attention that some applicants accredited in their own right propose service only to receive sites which will not be used by their own students. Such applicants do not satisfy the eligibility requirements. They must, therefore, as Item 3 of Section II in the FCC Form 330 now requires, indicate the name of the ''school/institution'' it will serve, the accreditation date and the accrediting agency or organization. However, we have found, in processing applications, that the name of the school or institution often does not match with any receive site specified in Section VI of the Form 330. For ease of processing, we shall require, for applicants accredited in their own right and serving their own students, to identify in Section II, Item 3(a), the receive sites in Section VI which fall under their jurisdiction. For other applicants, that is, those which are accredited and not serving their own students and those applicants which are unaccredited and establishing their eligibility by serving accredited institutions, we shall require that they specify in Section II, Item 3(b), the receive sites belonging to or being used by the accredited institution. This additional information will enable the staff and all interested parties to immediately determine the accreditation status of an applicant.

Other Proposals

38. *Offset.* The Further Notice proposed requiring the use of offset when all affected transmitters are capable of handling frequency offset stability requirements. This proposal is supported by most of the commenters. However, we believe that voluntary agreements to utilize frequency offsets better serve the public interest. The use of frequency offsets represents a balancing of the need to prevent co-channel interference with our desire to allow an increase in the number of stations in a geographic area. As such, frequency offsets are not a substitute for the standard of interference protection, a desired-to-undesired signal ratio of 45dB, that our technical rules are designed to ensure. Indeed, the efficacy of frequency offsets, which is not universally acclaimed by the engineering society, is largely determined by the exigencies of the situation at hand, requiring affected applicants and licensees to engage in cooperative efforts to construct and adjust their respective technical operations to successfully avail themselves of this engineering technique, if possible. Under these circumstances, we are not persuaded to require the mandatory specification of frequency offsets.

39. *Expedited Consideration of Applications.* In the Further Notice, we asked for comments on the Educational Parties and WCA's proposal that we expedite consideration of certain ITFS applications in return for the applicant's agreeing to an accelerated construction schedule. The stated purpose was to rapidly authorize facilities that would most likely become part of an operating wireless cable system. Most commenters are supportive of the proposal, although

they disagree on the details of its implementation. Opponents of expedited consideration argue that it would not in fact accelerate the construction of viable MDS systems, because processing the likely high number of requests would delay service to the public. We agree. Rapid authorization of ITFS facilities is essential to providing unique educational programming to greater numbers of people, and to accelerating the ability of MDS systems to compete with wired cable operators. The more rapid processing sought by the commenters will likely be achieved by implementation of the filing window, as enhanced by the proposed electronic filing and processing system and the other modifications adopted in this proceeding Hence, we do not believe that adoption of the commenters' proposal is warranted.

40. *FAA Authorization.* As mentioned in the Further Notice, we do not grant or modify a license until the Federal Aviation Administration (FAA) has determined that the proposed transmitter site and receive sites will pose no hazard to air navigation. To prevent needless delay in processing applications, we proposed to require applicants to inform the Commission of the FAA's determination. The record clearly supports our belief that enactment of this policy would speed processing at minimal cost to applicants. Therefore, to expedite processing, we require applicants to inform the Commission of the FAA's determination on a timely basis.

41. *Interference Studies.* The Further Notice noted that applicants frequently make technical claims that lack adequate supporting data. To address this problem, we proposed requiring the submission of terrain profiles and a quantitative analysis of any additional signal loss calculated by using the Longley-Rice propagation model, Version 1.2.2, in the point-to-point mode. Most of the commenters that addressed this issue generally support the proposal, but advocate various exceptions to the rule, allowing the use of less rigorous models under a variety of circumstances.

42. Based on the information before us, we shall not adopt the proposal. The record demonstrates that our concern will be met by the submission of any valid profile maps or sufficient data that takes terrain shielding into account and supports the validity of each claim, regardless of whether the study involves the Model. Also, for each instance where terrain shielding is relied upon to protect ITFS facilities, applicants will be required to submit the quantitative amount of signal attenuation, in dB, attributable to terrain shielding. Any study must use generally acceptable engineering practices, and applicants must state the specific model they have used in their analysis.

43. *Construction of Facilities.* Some commenters express concern that the Commission has extended construction periods for parties with no intention to construct. Hence, they request strict guidelines for granting such extensions. One proposes decreasing the period within which an ITFS licensee must construct its facilities from 18 months to 12 months. It alleges that, if its proposal were adopted, frequency speculators would quickly lose their licenses and their channels would consequently become available during the next window. In both cases, however, our existing rules already address these matters. We have set forth the requirements an educator must meet in order to obtain an extension of time within which to construct: (1) Construction is complete and testing of the facilities has begun; (2) substantial progress has been made; or (3) reasons clearly beyond the applicant's control, which applicant has taken all possible steps to resolve, have prevented construction. We have no specific evidence that these rules have not operated sufficiently to prevent abuses by frequency speculators. Therefore, we decline to modify the period of time to construct.

Administrative Matters

A. Regulatory Flexibility Analysis

44. These rules are not major rules for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that these rules will not have a significant impact on small business entities.

B. Final Regulatory Flexibility Analysis

45. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on ITFS stations by establishing a window filing procedure for the processing of such applications and applications for major changes to existing ITFS stations, and by adopting rules affecting the four-channel ruleee, receive site interference protection, the protected service area, and other aspects of ITFS operation. As detailed in the full text of the Report and Order, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens of ITFS stations. The full text of the Commission's final regulatory flexibility analysis may be found in Appendix A of the full text of this Report and Order.

C. Ordering Clauses

46. It is ordered that this Report and Order is adopted.

47. It is further ordered that, pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 CFR 74 is amended as set forth below. The change to the rules adopted in this Report and Order will become effective upon approval of the Office of Management and Budget of a modified FCC Form 330 to effectuate the modifications approved in this Report and Order.

48. It is further ordered that MM Docket No. 93–24 is terminated.

List of Subjects in 47 CFR Part 74

Television broadcasting, Instructional television fixed service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules

Part 74 of title 47 of the Code of Federal Regulations is amended as follows:

PART 74—EXPERIMENTAL AUXILIARY, AND SPECIAL BROADCAST DISTRIBUTION SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. Section 74.902 is amended by revising the second sentence of paragraph (d)(1) to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(d)(1) * * * An area of operation is defined as the area 20 miles or less from the ITFS transmitter.* * *

* * * * *

3. Section 74.903 is amended by adding a new paragraph (a)(5), by adding a final sentence to paragraph (e), and by adding a new paragraph (f), to read follows:

§ 74.903 Interference.

(a) * * *

(5) No receive site more than 35 miles from the transmitter shall be entitled to interference protection.

* * * * *

(e) * * * Such protection shall be applied solely with regard to applications filed subsequent to the request for a protected service area.

(f) With respect to protected service area proposals, two applications will be regarded as mutually exclusive if they are:

(1) Submitted during the same filing window;

(2) Otherwise grantable;

(3) Mutually exclusive only because either or both applicants request a protected service area. However, if an applicant in such a situation shows that the resulting interference would occur solely over water, the applications will not be considered to be mutually exclusive.

§ 74.910 [Amended]

4. Section 74.190 is amended by removing the entry Section 73.3564(a), (b) Acceptance of applications, and adding in its place, 73.3597(c)(2) Procedures on transfer and assignment applications.

5. Section 74.911 is amended by revising the third sentence of paragraph (a)(1), and by revising paragraph (c) to read as follows:

§ 74.911 Processing of ITFS station applications.

(a) * * *

(1) * * * A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another, change polarization, increase the EIRP in any direction by more than 1.5dB, increase the transmitting antenna height by 25 feet or more, or relocate a facility's transmitter site by 10 miles or more.* * *

* * * * *

(c)(1) New and major change applications for ITFS stations will be accepted only on dates specified by the Commission. Filing periods will be designated by the Commission in a Public Notice, to be released not fewer than 60 days before the commencement of the filing period. Qualified parties will have no fewer than 5 business days within which to submit their applications. After termination of the filing period, the Commission shall release a Public Notice with a list of applications filed in the window and provide no fewer than 30 days for the submission of petitions to deny. Uncontested applications that are not mutually exclusive with any other application or licensed facility, and are found to be acceptable, shall be granted. Mutually exclusive applications shall be evaluated pursuant to the comparative selection process set forth in § 74.913 as herein amended.

(2) The requirements of this section apply to a wireless cable entity requesting to be licensed on ITFS frequency pursuant to § 74.990. The application of such a wireless cable entity shall be included in the Public Notice released after the termination of the filing period.

* * * * *

6. Section 74.913 is amended by revising the first sentence of paragraph (d)(1), and adding a new paragraph (d)(5), to read as follows:

§ 74.913 Selection procedure for mutually exclusive ITFS applications.

* * * * *

(d) * * *

(1) Enrollment will be considered as of the last date of the filing window during which the applications were filed, as provided by § 74.911(c).* * *

* * * * *

(5) A receive site not receiving interference protection may not be utilized by an applicant for tie-breaking purposes.

* * * * *

7. Section 74.932 is amended by adding a new paragraph (e), to read as follows:

§ 74.932 Eligibility and licensing requirements.

* * * * *

(e) No receive site more than 35 miles from the transmitter site shall be used to establish basic eligibility.

* * * * *

8. Section 74.991 is amended by revising the last two sentences of paragraph (a) to read as follows:

§ 74.991 Wireless cable application procedures.

(a) * * * A wireless cable application for available instructional television fixed service channels will be subject to § 21.914 of this chapter with respect to other wireless cable applicants, and to the ITFS window filing period with respect to instructional television fixed service applications. All lists of accepted applications for ITFS frequencies, regardless of the nature of the applicant, will be published as ITFS public notices.

* * * * *

[FR Doc. 95–10024 Filed 4–24–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[DA95–741]

Inter-Category Sharing of Private Mobile Radio Services in the 806–821/851–866 MHz bands

AGENCY: Federal Communications Commission.

ACTION: Notice of policy.

SUMMARY: The Wireless Telecommunications Bureau has imposed a freeze on the filing of new applications for inter-category sharing on all private mobile radio service frequencies in the 806–821/851–866 MHz bands. This action was taken to ensure the continued availability of these channels to currently eligible Part 90 applicants not licensed in the Specialized Mobile Radio (SMR) Service until the Commission resolves inter-category sharing issues in PR Docket No. 93–144 and PP Docket No. 93–253. This action will assure the integrity of the Commission's licensing process.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Wireless Telecommunications Bureau, (202) 418–0627.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau's Order, DA95–741, adopted April 5, 1995, and released April 5, 1995. The full text of this Order is available for inspection and copying during normal business hours in the Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, Room 5322, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

This will impose no paperwork burden on the public.

Summary of Order

1. The Wireless Telecommunications Bureau imposed a temporary freeze on inter-category sharing of frequencies in the 806–821/851–866 MHz band allocated to the Public Safety, Industrial/Land Transportation (I/LT), Specialized Mobile Radio (SMR) and Business Services, in response to a request by the Association of Public Safety Communications Officials, Inc. (APCO). This request was opposed by the Industrial Telecommunications Association, Inc. (ITA).

2. APCO asserts that as a consequence of a Commission-imposed freeze (59 Fed. Reg. 60111 (November 22, 1994))

on the acceptance of 800 MHz applications on 280 SMR category channels, SMR applicants sought inter-category use of frequencies in the I/LT and Business Categories which, in turn, caused I/LT and Business applicants to seek out-of-category channel assignments on Public Safety category channels. APCO asserts that this situation endangers the continued availability of these frequencies to the public service community.

3. ITA opposes APCO's request asserting that it is a cavalier approach to eliminating a long-standing and beneficial rule. Opponent further contends that the stay request is merely a reiteration of APCO's long-standing objection to the inter-category sharing rules.

4. The Commission has undertaken a rule making proceeding (PR Docket 93–144, 59 FR 60111 (November 22, 1994)), in which it is considering Part 90 spectrum allocation issues. In response to a Congressional directive, the Commission is also in the process of developing a specific plan to ensure adequate spectrum to meet public safety demands. Continued inter-category sharing at this time, and at this substantial rate, could compromise both issues by exhausting the supply of available channels, particularly in the public safety spectrum.

5. Freezing acceptance of new inter-category sharing applications does not eliminate, as alleged by ITA, the inter-category rules. This temporary action merely ensures the successful resolution of the spectrum allocation issues raised in PR Docket No. 93–144 and the concerns raised by the public safety community.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure.

Federal Communications Commission.

Regina M. Keeney,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 95–10131 Filed 4–24–95; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Cost Accounting Standards for Composition, Measurement, Adjustment, and Allocation of Pension Costs

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule revising the Cost Accounting Standards relating to accounting for pension costs under negotiated government contracts, which was published Thursday, March 30, 1995 (60 FR 16534).

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

The final rule published Thursday, March 30, 1995, at 60 FR 16534 is corrected as follows.

§ 9904.412–64 [Corrected]

1. On page 16548, in the first column, in 9904.412–64(a)(1), in the fourth line, after ''to'' delete bracketed information and insert ''March 30, 1995''.

§ 9904.413–60 [Corrected]

2. On page 16555, in the third column, in 9904.413–60(c)(16), in the second line, after ''(c)'' delete ''(17)'' and insert ''(15)''.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

[FR Doc. 95–10100 Filed 4–24–95; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672, 675, and 676

[Docket No. 950418107–5107–01; I.D. 022295A]

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area, Limited Access Management of Federal Fisheries In and Off of Alaska; Nomenclature Change

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces a technical amendment to revise references to the term ''the Secretary'' and similar language in fisheries regulations dealing with North Pacific fisheries. The purpose of this revision is to reflect the delegation of the Secretary of Commerce's authority to implement Magnuson Fishery Conservation and Management Act (Magnuson Act) fishery regulations to NMFS. This revision clearly identifies for the public the agency responsible for these regulations.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone off Alaska are managed by NMFS according to Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands Area prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Act. These FMPs are implemented by regulations governing the U.S. groundfish fishery at 50 CFR parts 672 and 675, respectively. Limited Access Management of Federal Fisheries In and Off Alaska is implemented by regulations at 50 CFR part 676. General regulations that also pertain to U.S. fisheries are implemented at 50 CFR part 620.

Department of Commerce Organization Order 10–15 of January 15, 1988, delegated certain authority of the Secretary of Commerce to the Under Secretary/Administrator of NOAA. The Under Secretary has redelegated part of this authority, including management of living marine resources under the Magnuson Act, to NMFS. This action revises the North Pacific fisheries regulations to identify the agency that has the redelegated authority and responsibility for issuing the regulations and otherwise performing the management functions required by the Magnuson Act.

The term ''the Secretary, the Secretary of Commerce,'' or ''Secretarial'' are used throughout the regulations in referring to functions and authorities assigned to the Secretary of Commerce in the Magnuson Act. These functions have been delegated and are performed by NMFS. These amendments revise the

nomenclature to reflect that NMFS is the responsible agency.

Classification

Because these technical amendments make only minor, non-substantive corrections to existing rules, notice and public procedure thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553(b)(B) and (d), notice and public procedure thereon and a delay in effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to rules that have been determined to be not significant under E.O. 12866, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. No changes in the regulatory impacts previously reviewed and analyzed will result from implementation of this technical amendment.

List of Subjects in 50 CFR Parts 672, 675, and 676

Fisheries, Reporting and recordkeeping requirements.

Dated: April 18, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts, 672, 675, and 676 are amended as follows:

PART 672—GROUNDFISH OF GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In part 672, all references to ''The Secretary'' or ''the Secretary'' are revised to read ''NMFS''.

3. In § 672.20, paragraphs (d)(1)(i), (d)(1)(ii), (d)(2), (d)(5)(i), and (d)(5)(iv)(A)(*3*), all references to ''he'' are revised to read ''NMFS''.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

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

5. In part 675, all references to ''The Secretary'', ''the Secretary'', or ''The Secretary of Commerce'' are revised to read ''NMFS'', except for § 675.27(d)(2)(ii) where the title ''the Secretary of the Interior'' is retained.

6. In § 675.20, paragraphs (b)(1)(i) through (b)(1)(iii) and (b)(2)(i), all references to ''he'' are revised to read ''NMFS''.

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

7. The authority citation for part 676 continues to read as follows:

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

8. In part 676, all references to ''The Secretary'' or ''the Secretary'' are revised to read ''NMFS'', except for § 676.24(f)(2)(ii) where the title ''the Secretary of the Interior'' is retained.

9. In § 676.24(c), remove the word ''Secretarial'' in the last sentence.

10. In the heading of § 676.24(e) and in § 676.24(h)(3)(i), remove the word ''Secretarial'' and add in its place the acronym ''NMFS''.

[FR Doc. 95–10105 Filed 4–24–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 79
Tuesday, April 25, 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 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. Indian Health Service, HHS.

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), 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. The agenda for this meeting will consist of workgroup reports on the advantages and disadvantages of developing regulations in those subject areas provided in the ISDEAA where regulations are permitted. In addition, further meeting and work assignments will be planned.

DATES: The Committee will meet on the following days beginning at approximately 8:30 am and ending at approximately 5:00 pm on each day: Thursday, May 11, Friday, May 12, Saturday, May 13 (Workgroups may be meeting May 9th and the 10th 1995.)

ADDRESSES: All meetings May 11 through 13, 1995, will be held at the: Denver Marriott Tech Center, 4900 S. Syracuse Street, Denver CO 80237. Tel.: (303) 749–2528. (Workgroups will also be meeting at the same location.)

Written statements may be submitted 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, or Ms. Merry Elrod, Acting Director, Division of Self-Determination, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A–19, Rockville, MD 20857. Telephone (301) 443–1104/1044.

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: April 20, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–10194 Filed 4–21–95; 10:06 am]

BILLING CODE 4310–02–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901 and 924

Alabama and Mississippi Regulatory Program

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: OSM is announcing the extension of the public comment period to May 10, 1995, pertaining to the implementation in Alabama and Mississippi of the underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM requested public comment on this issue on April 10, 1995 (60 FR 18044). The public comment period is being extended for the convenience of the public.

DATES: Written comments must be received by 4:00 p.m., C.S.T. on May 10, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Jesse Jackson, Jr., Director, Birmingham Field Office at the address listed below.

Copies of the applicable parts of the Alabama and Mississippi programs, SMCRA, the implementing Federal regulations, information provided by Alabama and Mississippi concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290–7282.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

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 Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Dated: April 17, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–10086 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 926

Montana Abandoned Mine Land Reclamation (AMLR) Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Montana AMLR plan (hereinafter, the ''Montana plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the addition of new provisions to the Montana plan concerning the reclamation of interim program and insolvent surety bond forfeiture coal sites, future set-aside funds and an acid mine drainage program, and water supply replacement project requirements. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), and to improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t., May 25, 1995. If requested, a public hearing on the proposed amendment will be held on May 22, 1995. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t., on May 10, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana plan, 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 Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, Wyoming 82601–1918

Vic Anderson, Director, Abandoned Mine Reclamation Bureau, Montana Department of State Lands, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444–2074

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

SUPPLEMENTARY INFORMATION:

I. Background on the Montana AMLR Plan

On November 24, 1980, the Secretary of the Interior approved the Montana plan. General background information, including the Secretary's findings, the disposition of comments, and the approval of the Montana plan can be found in the November 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's plan and plan amendments can be found at 30 CFR 926.20 and 926.25.

II. Proposed Amendment

By letter dated March 22, 1995 (administrative record No. MT–AML–01), and memorandum dated April 5, 1995 (administrative record No. MT–AML–02), Montana submitted a proposed amendment to its AMLR plan pursuant to SMCRA. Montana submitted the proposed amendment at its own initiative. Montana proposed to revise its AMLR plan to allow implementation of several initiatives established under the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). The first initiative involves use of abandoned mine reclamation funds for reclaiming high priority sites where mining occurred during the period beginning on August 4, 1977, and ending on or before April 1, 1980, and where any funds available for reclamation or abatement are not sufficient to provide for adequate reclamation or abatement at the site. The second initiative involves use of abandoned mine reclamation funds for reclaiming high priority sites where mining occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, during which time the surety became insolvent, and where funds immediately available from proceedings relating to such insolvency or from any other source, are not sufficient to provide for adequate reclamation or abatement at the site. The third initiative involves setting aside up to 10 percent of the total of the abandoned mine reclamation grants made annually to Montana to provide for restoration of eligible lands and waters after expiration of the Federal abandoned mine land program and implementation of an acid mine drainage program. The fourth initiative allows Montana to expend up to 30 percent of the abandoned mine reclamation grant funds allocated each year to the State for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, and to replace water supplies adversely affected by past mineral mining practices.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a) and 884.14(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Montana plan.

1. 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 Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., May 10, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. 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**. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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 testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify 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 amendment may

request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of 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 or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribal AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribe AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 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 established by SMCRA or 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 in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 19, 1995.

Russell F. Price,

Acting Assistant Director , Western Support Center.

[FR Doc. 95–10168 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–05–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Changes in Cost Accounting Practices

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Cost Accounting Standards Board (CASB) invites coverage comments on proposed amendments to the regulatory provisions contained in Chapter 99 of Title 48. The proposed amendments would revise the current definitions and illustrations governing changes in cost accounting practices. Also proposed is the addition of a new Subpart to clarify the process for determining and resolving the cost impact on covered contract prices and/or contract costs when a contractor makes a change to its cost accounting practices, fails to comply with a Cost Accounting Standard (CAS) or fails to consistently follow its established cost accounting practices.

DATES: Requests for a copy of the proposed amendments must be in writing and must be received by June 26, 1995. Comments must be in writing and must be received by July 10, 1995.

ADDRESSES: Requests for a copy of the proposed amendments or comments pertaining to this Advance Notice of Proposed Rulemaking (ANPRM) should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9001, Washington, DC 20503. Attn: CASB Docket No. 93–01A.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules and regulations are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. This process consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

This proposal is step two in the four step process.

B. Summary of Proposed Rule

In response to the Cost Accounting Standards Board's solicitation of agenda items, several commenters identified the Board's regulatory coverage on ''changes in cost accounting practice'' as a potential agenda item. The commenters advised the Board that industry and Government officials are interpreting the regulatory coverage differently and often disagree on whether a particular change made in a contractor's organizational structure did or did not result in a change in cost accounting practice. The Board, after review and extended discussions of the issues associated with the proposed topic, identified Organizational Changes and Changes In Cost Accounting Practices as a topic on which a research project should be started.

On April 9, 1993, the CASB published a notice in the **Federal Register**, 58 FR 18428, requesting public comments from interested parties concerning a Staff Discussion Paper on that topic. The purpose of the Staff Discussion Paper was to solicit public views concerning the advantages, disadvantages and improvements anticipated if the Board were to

promulgate more explicit provisions on whether organizational changes made by contractors do or do not result in cost accounting practice changes.

After consideration of the public comments received, the Board concluded that contractors and Federal officials appear to be interpreting the Board's rules and regulations governing changes in cost accounting practice under CAS-covered contracts differently. Furthermore, the contract price and cost adjustment provisions governing cost accounting practice changes under CAS-covered contracts do not appear to be clearly understood and, consequently, some inefficient, uneconomical and possibly inequitable practices may have evolved as the contracting parties proceeded to comply with the Board's requirements. Therefore, the Board is proposing to amend Chapter 99 by:

Revising the definitions and illustrations governing cost accounting practice changes, for purposes of making it explicit that a change in the manner in which costs are grouped and accumulated constitutes a change in cost accounting practice and that organizational changes must be evaluated on a case-by-case basis in order to determine if a change in cost accounting practice has occurred.

Adding a new Subpart 9903.4 to delineate the contract price and cost adjustment process to be applied when a contractor changes a cost accounting practice, fails to comply with a Standard, or fails to consistently follow its established cost accounting practices. The proposed coverage is intended to facilitate the resolution of the cost impact of such compliant and noncompliant cost accounting practice changes under the requirements of existing and future CAS-covered contracts. Accordingly, when issued as a final rule, the proposed Subpart 9903.4 provisions would apply to all CAS-covered contracts requiring adjustment, including those CAS-covered contracts awarded prior to the effective date of the final rule.

The purpose of this ANPRM is to seek broad public comment concerning the proposed amendments. In particular, the Board is considering the establishment of certain new requirements that it believes would clarify and facilitate the overall cost impact process governing cost accounting practice changes. Accordingly, the Board invites interested parties to specifically comment on the following ANPRM provisions:

—Proposed 9903.201–4, in paragraphs (a)(4) of the proposed contract clauses, includes new provisions requiring a contractor to agree to price adjustments if its CAS-covered subcontractors make required, voluntary or desirable changes to their cost accounting practices pursuant to the subcontracts' terms and conditions.

—Proposed 9903.201–6(b) establishes new criteria for determining when a voluntary change in cost accounting practice may be treated as a desirable change.

—Proposed 9903.404(b)(ii)(A) requires CAS-covered contractors to notify the Government of and fully disclose cost accounting practice changes required to comply with a new or modified Standard 60 days prior to the Standard's effective date. This requirement is predicated on the Board's decision that final rules will generally be issued 120 days prior to the effective date of a new or modified Standard.

—Proposed 9903.404(b)(ii)(B) establishes new notification requirements for voluntary and desirable changes.

—Proposed 9903.404(b)(vi) provides a new equitable adjustment provision for contracts negotiated within 60 days after a contractor notifies the Government of a voluntary change that would otherwise be subject to a CAS-covered contract's ''no increased cost'' provision.

—Proposed 9903.404(e) provides for the use of a cost impact settlement proposal that would permit early resolution of the estimated cost impact in lieu of the use of a detailed cost impact proposal.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

[FR Doc. 95–10071 Filed 4–24–95; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 675 and 677

[Docket No. 95041405–5105–01; I.D. 033095A]

RIN 0648–AH69

Groundfish of the Bering Sea and Aleutian Islands Area; Chum Salmon Savings Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 35 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). This amendment proposes to prohibit the use of trawl gear in a specified area of the Bering Sea (BS) during the pollock nonroe season. Regulatory amendments also are proposed that would increase 1995 observer coverage for mothership processor vessels, and some shoreside processors receiving pollock harvested in the catcher vessel operational area (CVOA) and require the mothership processor vessels and shoreside processors to obtain the capability for electronic transmission of daily observer reports. This action is necessary to reduce chum salmon bycatch amounts in the pollock fishery and is intended to promote the objectives of the FMP.

DATES: Comments must be submitted by June 5, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 35 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared for Amendment 35 are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620. Regulations governing observer coverage requirements for specified U.S. fisheries under the North Pacific Fisheries Research Plan (Research Plan) are codified at 50 CFR part 677.

This action proposes regulations to implement Amendment 35 to the FMP.

If approved by NMFS, this amendment would prohibit the use of trawl gear in a specified area of the BS that historically contributes to relatively high salmon bycatch rates during late summer months. This action also proposes two associated regulatory amendments that would (1) require mothership processor vessels and some shoreside processing plants to obtain an additional observer, and (2) require the affected mothership processor vessels and 100–percent-observer-coverage shoreside processing plants to obtain the necessary software and hardware for electronic transmission of daily observer reports.

In 1993, the total ''other'' salmon bycatch amount in the BSAI fisheries was 245,000 fish—approximately six times the bycatch level estimated for each of the previous 2 years and triple the previous highest bycatch amount of 72,000 ''other'' salmon estimated in the 1984 foreign trawl fishery. ''Other'' salmon is defined as salmon other than chinook salmon. Historical observer data indicate that approximately 95 percent of the ''other'' salmon bycatch in the BS is chum salmon.

The magnitude of the 1993 chum salmon bycatch in the pollock nonroe season is of concern especially in view of poor returns of chum salmon to western Alaska river systems during recent years. These poor returns have precipitated closure, by the Alaska Department of Fish and Game, of commercial, sport, and subsistence fisheries in several western Alaska Districts.

To address the problems of high salmon bycatch in the BS, NMFS implemented an emergency rule on August 15, 1994 (59 FR 35476, July 12, 1994) that imposed restrictions on ''other'' salmon bycatch during the pollock nonroe season of 1994. The emergency rule closed a specific area (the salmon savings area) in the CVOA after a limit of 42,000 ''other'' salmon had been taken in the CVOA. The salmon savings area (SSA) was defined based on historical observer data that indicated a relatively high ''other'' salmon bycatch rate. Under the emergency rule the SSA was closed to all trawling on August 20, 1994, 5 days after the opening of the pollock nonroe season. As in past years, vessels fishing in the SSA in 1994, prior to closure of this area, experienced a high ''other'' salmon bycatch rate. Continued fishing in the SSA in 1994 would likely have led to higher bycatch rates than those seen after the closure.

At its January 1995 meeting, the Council recommended that NMFS implement the following long-term management measures to address the chum salmon bycatch problem in the BSAI pollock nonroe season:

1. The chum salmon savings area (CSSA), defined under the emergency rule as the SSA, would be closed to all trawling for the month of August, with the closure continuing or being reinstated once a bycatch limit of 42,000 ''other'' salmon has been reached in the CVOA. Accounting for chum salmon bycatch attributable towards the bycatch limit would begin on August 15. The CSSA would reopen to trawling on October 15.

2. Mothership processor vessels that receive pollock harvested in the CVOA during the 1995 pollock nonroe season would be required to carry two observers until the bycatch limit for ''other'' salmon is reached or until October 15, whichever occurs first. For the same period of time, those shoreside processing plants that also receive pollock harvested in the CVOA during the 1995 pollock nonroe season and that offload fish at two locations on the same dock and have distinct and separate equipment at each location to process those fish would also be required to have an extra observer. For 1996 and beyond, observer coverage requirements for these vessels and shoreside plants could be specified annually under the Research Plan.

3. Electronic communication capabilities would be required for each mothership processor vessel that receives pollock harvested in the CVOA during the pollock nonroe season and for each shoreside processing facility that receives pollock harvested from the CVOA during the pollock nonroe season and that is required to have 100–percent-observer-coverage under 50 CFR 677.10.

These measures are described in detail and justified below.

Chum Salmon Savings Area

At its January 1995 meeting, the Council adopted an FMP amendment that would provide the authority to prohibit trawl fisheries in an area within the CVOA that historically accounts for relatively high salmon bycatch rates during summer and fall months. The area would be closed from August 1 through August 31. The closure would continue or be reinstated once a bycatch limit of 42,000 ''other'' salmon is reached and the area would remain closed through October 14. Accounting of salmon towards the bycatch limit would start at the beginning of the pollock nonroe season on August 15. Only salmon caught in the CVOA would be counted towards the bycatch limit. This measure is intended to reduce chum salmon bycatch in the pollock nonroe fishery.

The closure area (the CSSA) is defined by straight lines connecting the following coordinates in the order listed:

56°00′ N., 167°00′ W.;
56°00′ N., 165°00′ W.;
55°30′ N., 165°00′ W.;
55°30′ N., 164°00′ W.;
55°00′ N., 164°00′ W.;
55°00′ N., 167°00′ W.;
56°00′ N., 167°00′ W.

At its January 1995 meeting, the Council considered three different alternatives with seven options for time/area closures to limit chum salmon bycatch during the pollock nonroe season. The Council recommended the same closure area that was previously chosen for closure under the emergency rule. This area was chosen as a minimum closure area that would provide the most consistent protection to ''other'' salmon during the pollock nonroe season, but would still allow access to productive pollock fishing grounds.

The CSSA historically has accounted for a large proportion of ''other'' salmon bycatch and a relatively small proportion of groundfish harvest. The recommended 42,000 ''other'' salmon bycatch limit represents 50 percent of the 1991, 1992, and 1993 average of ''other'' salmon bycatch in the CVOA. The 42,000 ''other'' salmon limit approximates the 1991 and 1992 bycatch, while providing some buffer to accommodate slight increases in bycatch.

During the period July through October, the recommended CSSA accounted for 1.0, 0.8, and 7.0 percent of the total annual observed groundfish catch in the BSAI pollock and Pacific cod trawl fisheries during 1991, 1992, and 1993, respectively. During the period July through October of 1991, 1992, and 1993, this area accounted for 38, 40, and 54 percent, respectively, of the total annual ''other'' salmon bycatch. During the period July through October 1993, the CSSA had the highest ''other'' salmon bycatch rate of the areas analyzed—approximately 1.2 ''other'' salmon per metric ton (mt) of groundfish. Also, during the pollock nonroe season in 1994, the CSSA had a similarly high ''other'' salmon bycatch rate (1.12 salmon/mt groundfish) prior to the closure of this area. The initial number of salmon estimated in the first week of the 1994 pollock nonroe season was similar in both 1993 and 1994. Total bycatch was reduced in 1994 following the closure of the CSSA. Determining whether the reduced weekly catch of ''other'' salmon was due

to the closure or would have occurred without the closure is difficult. Given the high bycatch rates within the CSSA, closing this area likely had the desired effect of reducing overall ''other'' salmon bycatch.

This proposed rule is intended to prevent a recurrence of the high 1993 chum salmon bycatch experienced during the BSAI pollock nonroe season. The bycatch of ''other'' salmon appears to be a function of the time of year, distribution of fishing effort, and spatial distribution of salmon. Historical data indicate that ''other'' salmon bycatch is reduced generally during the winter months and elevated during the months of July through October. Approximately 67 percent of all ''other'' salmon bycatch in observed hauls during 1991 was taken during August, and 40 percent and 62 percent of the 1992 and 1993 ''other'' salmon bycatch, respectively, was taken during the month of September. Starting in 1993, the opening of the pollock nonroe season was delayed from June 1 until August 15 (58 FR 30997, May 28, 1993). This delay was implemented to achieve increased revenues from the harvest of BSAI pollock during the nonroe season and to provide participants in the pollock nonroe fishery increased opportunities to fish in other groundfish fisheries.

Although the delay of the pollock nonroe season until August 15 was expected to increase chum salmon bycatch, the magnitude of the 1993 bycatch amount was not anticipated. Spatially, the number of ''other'' salmon appears to be highest south of 57° N. lat. and east of 168° W. long. Consistent with historical data, about 80 percent of the 1993 BSAI ''other'' salmon bycatch was taken in the CVOA.

Increased Observer Coverage and Electronic Transmission of Observer Data

NMFS must rely on data collected by NMFS-certified observers to manage the ''other'' salmon bycatch limit of 42,000 fish. Currently, one observer is required on each mothership processor vessel participating in either the inshore or offshore component pollock fishery and at most shoreside processing plants receiving pollock. Regulations at § 675.20(c)(6) require that all salmon taken in BSAI trawl operations be retained until the number of salmon is determined by a NMFS-certified observer. NMFS intends to use these observed counts to monitor the ''other'' salmon bycatch limit. To monitor the chum salmon bycatch limit effectively and close the CSSA once the 42,000 fish bycatch limit has been reached, NMFS must receive daily electronic reports of salmon bycatch numbers. NMFS typically receives weekly reports on groundfish catch and on prohibited species bycatch to monitor the fisheries.

The time required to process these reports results in a delay between the receipt of reports and determination of overall catch statistics that provide the basis for determining whether a closure is required. If the ''other'' salmon bycatch were to proceed at the 1993 or 1994 rates, weekly reporting would not be sufficient to allow timely closure of the CSSA once the 42,000 ''other'' salmon limit had been reached, thus contributing to higher than necessary salmon bycatch during the pollock nonroe season.

Effective monitoring of the bycatch limit requires a second observer on each mothership processor vessel and at some shoreside processing plants that receive fish from catcher boats fishing in the CVOA during the pollock nonroe season. This requirement is necessary to ensure accurate and timely counts of salmon bycatch, without compromising the other groundfish sampling duties of the observer. The time required by observers to count salmon bycatch for each haul and transmit these data on a daily basis, places an extra burden on observers. Because large numbers of hauls are delivered to mothership processor vessels compared to some other processors a greater burden would be placed on a single observer to obtain the necessary salmon counts and transmit that information on a daily basis. Those shoreside processors that offload fish at more than one location on the same dock and have distinct and separate equipment at each location to process those fish would also be required to have an extra observer to monitor the large number of deliveries.

Salmon counts, to be attributed to the bycatch limit, would begin on August 15. NMFS would require the additional observers to be aboard the mothership processor vessels and at the shoreside processing plants from August 15, the start of the pollock nonroe season, until the bycatch limit of 42,000 fish has been reached. These vessels and shoreside plants would be directly responsible for observer coverage costs in 1995 and would not receive credit for these costs, under § 677.6(d), against 1995 Research Plan fee assessments authorized under § 677.6(b). Subsequent assignment of observer coverage for 1996 and beyond would be annually specified under the Research Plan (§ 677.11).

To enable the observers to report haul-by-haul statistics and salmon bycatch numbers on a daily basis, the operator of each mothership processor vessel that receives fish harvested in the CVOA must provide specific communication equipment.

The specific equipment listed below is similar to the requirements for the emergency rule that also imposed restrictions on ''other'' salmon bycatch during the pollock nonroe season of 1994. The processors affected by this rule should already have this communication equipment, except that some computers may need to be upgraded. Significant additional costs would not be incurred. This specific equipment is necessary to ensure compatibility with the software developed by the NMFS Observer Program Office. Equipment that differs from these specifications would not operate the data-entry software that allows electronic data transmission. Not all computer hardware and software and satellite systems are compatible and it would be economically and practically inefficient to set up multiple systems to transmit and collect the same information. These equipment requirements are consistent with the applicable specifications for vessel monitoring systems published in the **Federal Register** on March 31, 1994 (59 FR 15180).

Mothership processor vessels would be required to have INMARSAT Standard A satellite communication capabilities and associated software (cc:Mail remote and a data entry program provided by the Regional Director) for observer's use. Each mothership processor vessel must also have the following equipment or equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: a personal computer (PC) with a 486 or better processing chip, a DOS version 3.0 or better operating system, and 10 megabytes of free hard disk storage, and eight megabytes of random access memory (RAM) available to support the program used by the observer. Each shoreside facility that receives pollock harvested in the CVOA during the pollock nonroe season and that is required to have 100–percent-observer-coverage under 50 CFR 677.10, must have the capability to transmit data over telephone lines using a computer modem. These processors would make available to observers the following equipment or equipment compatible therewith: a PC with a 486 or better processing chip, with at least a 9600 baud modem, and a phone line. The PC must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, and have at least 10 megabytes of free

hard disk storage with eight megabytes RAM to support the software program used by the observer.

Vessels and shoreside processing facilities would be required to maintain fully functional and operational electronic-data communication equipment.

The affected mothership processor vessels and shoreside processors must obtain for observers' use the data entry software program provided by the Regional Director.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time NMFS has not determined that the FMP amendment that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an IRFA as part of the RIR, which describes the impact of this proposed rule on small entities, if adopted. The IRFA indicates that the preferred option was the most cost-effective of the options considered.

Although, the groundfish historically caught in this area can be harvested elsewhere in the BS, this proposed action could have a significant economic impact on the segment of the fishing industry that fishes for nonroe pollock because all of the catcher vessels would be prohibited from trawling in the closure area and would have to relocate, incurring undeterminable expenses. Operating costs could increase for catcher vessels that are forced to fish in locations other than the closure area and the catch-per-unit-effort in the locations that these vessels are displaced to may be less than in the closure area. These factors could contribute, for these catcher vessels, to reductions in gross revenues of more than 5 percent, annual compliance costs that increased total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

A copy of this analysis is available from the Council (see **ADDRESSES**).

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

List of Subjects in 50 CFR Parts 675 and 677

Fisheries, Reporting and recordkeeping requirements.

Dated: April 19, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 675 and 677 are proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. Section 675.22, paragraph (h) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(h) *Chum Salmon Savings Area.* (1) Trawling is prohibited from August 1 through August 31 in the area defined by straight lines connecting the following coordinates in the order listed:

56°00′ N. 167°00′ W.,
56°00′ N. 165°00′ W.,
55°30′ N. 165°00′ W.,
55°30′ N. 164°00′ W.,
55°00′ N. 164°00′ W.,
55°00′ N. 167°00′ W.,
56°00′ N. 167°00′ W.

(2) When the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during the time period of August 15 through October 14 in the catcher vessel operational area, defined in paragraph (g) of this section, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the area defined under paragraph (h)(1) of this section.

3. Section 675.25 is revised as follows:

§ 675.25 Observer requirements.

(a) *General.* Bering Sea and Aleutian Islands management area groundfish observer requirements are contained in part 677 of this chapter.

(b) *Additional observer coverage requirements applicable through December 31, 1995.* (1) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15 under § 675.23(e), is required to have a second NMFS-certified observer aboard, in addition to the observer required under § 677.10(a)(1)(i) of this chapter for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2).

(2) Each shoreside processor that offloads fish at more than one location on the same dock and has distinct and separate equipment at each location to process those fish and that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15, under § 675.23(e) is required to have a NMFS-certified observer, in addition to the observer required under § 677.10(a)(1)(i) of this chapter, at each location where fish is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2).

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

4. The authority citation for part 677 continues to read as follows:

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

5. Section 677.10, paragraphs (c)(3) and (d)(3) are revised to read as follows:

§ 677.10 General requirements.

* * * * *

(c) * * *

(3) Facilitate transmission of observer data by:

(i) Allowing observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States;

(ii) Ensuring that each mothership that receives pollock harvested in the catcher vessel operational area, defined at

§ 675.22(g) of this chapter, during the pollock nonroe season that starts on August 15, is equipped with INMARSAT Standard A satellite communication capabilities, cc:Mail remote, and the data entry software, provided by the Regional Director, for use by the observer. The operator of each mothership processing vessel shall also make available for the observers' use the following equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: a personal computer with a 486 or better processing chip, a DOS 3.0, or better operating system with 10 megabytes free hard disk storage and 8 megabytes RAM; and

(iii) Ensuring that the communication equipment that is on mothership processor vessels as specified at paragraph (c)(3)(ii) of this section, and

that is used by observers to transmit data is fully functional and operational.

* * * * *

(d) * * *

(3) Facilitate transmission of observer data by:

(i) Allowing observers to use the shoreside processing facility's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States;

(ii) Ensuring that each shoreside processing facility that is required to have 100–percent-observer-coverage under § 677.10 and that receives pollock harvested in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15, under § 675.23(e) of this chapter, makes available to the observer the following equipment or equipment compatible therewith: a personal computer with a minimum of a 486 processing chip with at least a 9600–baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, 10 megabytes free hard disk storage, 8 megabytes RAM, and with data entry software provided by the Regional Director for use by the observers; and

(iii) Ensuring that the communication equipment that is in the shoreside processing facility as specified at paragraph (d)(3)(ii) of this section, and that is used by observers to transmit data is fully functional and operational.

* * * * *

[FR Doc. 95–10150 Filed 4–20–95; 2:46 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 79
Tuesday, April 25, 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

Forest Service

Klamath, Northwest Sacramento and California Coast Provincial Interagency Executive Committee (PIEC) Advisory Committees

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath, Northwest Sacramento and California Coast PIEC Advisory Committees will meet on May 24 and May 25, 1995 at the Park Terrace Convention Center, 1900 Hilltop Drive in Redding, California. The meeting will begin at 12:00 noon on May 24 and adjourn at 5:30 p.m. The meeting will reconvene at 8:00 a.m. on May 25 and continue until 3:00 p.m. The three PIEC Advisory Committees will meet both together and separately during the scheduled meeting time. Agenda items to be covered include: (1) Context of the Advisory Committees, including background on the President's Forest Plan; (2) mission and purpose of the Advisory Committees; (3) relationship between the Advisory Committees and the PIECs; (4) introduction of members and orientation; (5) operating guidelines and ground rules; and (6) a public comment period. All PIEC Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Jim Anderson, USDA Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: April 19, 1995.

Barbara Holder,

Forest Supervisor.

[FR Doc. 95–10112 Filed 4–24–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Delta-Clearwater River Watershed, Delta Junction, AK

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Delta-Clearwater River Watershed, Delta Junction, Alaska.

FOR FURTHER INFORMATION CONTACT: Steven A. Probst, State Conservationist, Natural Resources Conservation Service, 949 E. 36th Avenue, Suite 400, Anchorage, AK 99508–4362, Phone (907) 271–2424.

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

The proposed project is to reduce the threat of flooding and associated erosion on the tributaries of the Delta-Clearwater River. This proposed project will protect the unique coho salmon and arctic grayling found in the Delta-Clearwater River by eliminating the threat of fishery habitat destruction from sediment deposition. The Delta-Clearwater River fisheries provide significant benefits not only to commercial and sport catch but also to the subsistence way of life in numerous, downstream villages. The project also will reduce other flood damage to cropland, the Alaska Highway, local roads, and general recreation areas.

The recommended action proposed measures for flood prevention:

- 2,400 acres of wetland and floodplain easements.
- 1,200 acres of vegetative stabilization structures.
- Four 5,000 foot long waterspreading diversions.
- One 16,000 foot long diversion between Granite and Rhoads Creeks.
- 3.8 miles of grassed waterways.
- Ten grade stabilization structures.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting James E. Schmidt, Assistant State Conservationist, Programs, (907) 271–2424.

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

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: April 19, 1995.

Steven A. Probst,

State Conservationist.

[FR Doc. 95–10090 Filed 4–24–95; 8:45 am]

BILLING CODE 3401–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–401]

Certain Textile Mill Products From Thailand; Notice of Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination in part of the countervailing duty suspended investigation of certain textile mill products from Thailand.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its termination in part of the countervailing duty suspended investigation (suspended investigation) of Certain Textile Mill Products from

Thailand with respect to three like product categories classified under 12 Harmonized Tariff Schedule (HTS) item numbers.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Jacqueline Wallace or Steve Presing, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394 or (202) 482–0194.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1994, the Department published in the **Federal Register** notification of its intent to terminate the suspended investigation covering Certain Textile Mill Products from Thailand and invited interested parties to comment (59 FR 9727, dated March 1, 1994). On March 31, 1994, the Department received timely objections to the intent to terminate the suspended investigation from the Amalgamated Clothing and Textile Workers Union (ACTWU); American Textile Manufacturers Institute, Inc. (ATMI); Certain Individual Producers of ATMI; American Yarn Spinners Association (AYSA); and Certain Individual Producers of AYSA.

On April 22, 1994, the Royal Thai Government (RTG) and Thai Textile Manufacturers Association (TTMA), challenged the interested party status of those parties who objected to our intent to terminate the suspended investigation. As a result of the objections received from the RTG and TTMA, the Department requested certifications demonstrating interested party status from ACTWU, ATMI, certain individual producers of ATMI, AYSA, and certain individual producers of AYSA in accordance with 19 CFR 355.2(i) (3), (4), and (5). Based on our analysis of interested party status by like product categories (*See internal recommendation from Roland MacDonald to Joseph A. Spetrini* dated January 12, 1995, for a complete analysis), we have determined that it is appropriate to terminate the suspended investigation with respect to the following three like product categories because the Department did not receive certifications demonstrating interested party status:

(1) Yarn of Man Made Fiber

Continuous Cellulosic
5401.20.0000
5406.20.0000

(2) Other Miscellaneous Categories

Wadding & Articles
5601.10.1000
5601.21.0010
5601.21.0090

Other Made-up Articles
6307.10.2005
6307.10.2015
6307.10.2020
6307.10.2027
6307.10.2028
6307.10.2030

(3) Wool Made-Ups and Miscellaneous

Floor Coverings
5703.10.0000

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: April 18, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–10166 Filed 4–24–95; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patents Concerning Anticonvulsant and Neuroprotective Agents

AGENCY: U.S. Army Medical Research and Materiel Command, Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,258,386 entitled ''(+)-3-Substituted-N-Alkylmorphinans, Synthesis and use as Anticonvulsant and Neuroprotective Agents'' and issued on November 1, 1993, and U.S. Patent No. 5,331,010 entitled ''1-Phenylalkanecarboxylic Acid Derivatives as Anticonvulsant and Neuroprotective Agents; and issued on July 19, 1994. These patents have been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: The inventions represent discoveries that members of certain classes of compounds [(+)-3-substituted-N-alkylmorphinans and 1-phenylalkanecarboxylic acids] possess effective usefulness as nonaddictive anticonvulsant and neuroprotective agents. The 1-phenylalkanecarboxylic acids include novel non-opiate derivatives as well as previously published species. Methods for controlling convulsions in a variety of pharmaceutical formulations and modalities are described. In both inventions, novel compounds which possess these biological properties are presented in a method or methods of use for preventing, treating, or controlling convulsions in mammals having a need for such treatment. The compounds do not lead to dependency, have low toxicity, and provide effective anticonvulsant or neuroprotective treatment with little or no behavioral detriment to the recipient.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–10079 Filed 4–24–95; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Method for Lysing Thrombi

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,399,158, entitled ''Method of Lysing Thrombi'', and issued on March 21, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: The invention describes an improved method for prevention or treatment of thrombosis, including deep venous thrombosis (DVT) and acute arterial thrombosis, such as coronary artery thrombosis, while avoiding damage to the surrounding tissue. The method includes the administration of plasminogen activators in conjunction with intermittent (pulse mode) ultrasound and the imposition of a fluid-containing barrier between the

ultrasound source and the patient's skin. It is also the purpose of the invention to provide a means for preventing formation of thrombi by administration of small doses of plasminogen-activating agents along with intermittent ultrasound of patients who are likely to suffer from formation of thrombi. Particularly at risk are older patients that are immobilized or patients whose injuries have caused decreased circulation in the extremities.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–10080 Filed 4–24–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 11, 12, 13, 1995.

TIME: May 11, 1995—Full Board, 2:00 P.M.–6:30 P.M.; Executive Committee, 7:00 P.M.–8:30 P.M. May 12, 1995—Achievement Levels Committee, 7:30 A.M.–10:00 A.M.; Subject Area Committee #1, and Reporting and Dissemination Committee, 8:30 A.M.–10:00 A.M.; Design and Methodology Committee, and Nominations Committee, 10:00–11:30 A.M.; Full Board 11:30 A.M.–5:00 P.M. May 13, 1995—Full Board, 9:00 A.M. until adjournment, approximately, 12:00 Noon.

LOCATION: The Madison Hotel, 15th and M Streets, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On May 11, the full Board will convene in open session at 2:00 P.M. until 6:30 P.M. The full Board agenda will be devoted to review and discussion of the Board's strategic planning activities.

Also, on May 11, the Executive Committee will be in session. Agenda items for the meeting include consideration of the structure of the NAEP schedule, and the NAGB nominations process.

On May 12, 1995 from 7:30 A.M.–11:00 A.M. the Achievement Levels Committee will meet to hear a general update on the 1994 achievement-level setting process. The Achievement Levels Committee will meet jointly with the Reporting and Dissemination Committee beginning at 9:30 A.M. to discuss the anchor descriptions for the 1994 U.S. history and world geography in relation to the achievement levels descriptions. Beginning at 8:30 A.M., there will be meetings of the Subject Area Committee #1 (SAC #1) and the Reporting and Dissemination Committee. SAC #1 will discuss the progress on the NAEP civics project. Agenda for the Reporting and Dissemination (R&D) Committee includes consideration of policy on public access to NAEP cognitive and background questions, and discussion of release schedule for future NAEP reports and implementation of Board policy on background questionnaires. The R&D Committee will meet jointly with the Achievement Levels Committee as referenced above. Also, in joint session with the Design and Methodology Committee, the R&D Committee will consider separate reporting of NAEP results for Spanish-language and disabled students.

The Design and Methodology Committee will meet from 10:00 A.M. until 11:30 A.M., to continue discussions on below state level reporting, and to review policy guidance and implementation recommendations on sampling issues for 1996. The Committee will meet jointly with the R&D Committee as referenced above.

There will be a meeting of the Nominations Committee from 10:00 A.M. until 11:30 A.M. The agenda for this meeting will be devoted to the Committee's consideration of the process for soliciting nominations to prepare a list of recommended persons for the Secretary's appointment to upcoming vacancies in Board membership.

Also, on May 12, the full Board will be in session, from 11:30 A.M. until 5:00 P.M. Agenda items for the full Board meeting include an update on NAEP program, an overview of the achievement levels setting process, and continuation of strategic planning activities.

On May 13, at 9:00 A.M., the full Board will reconvene when the Board will hear reports from its subcommittees. This meeting of the National Assessment Governing Board will be adjourned at approximately, 12:00 Noon.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Dated: April 20, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–10130 Filed 4–24–95; 8:45 am]

BILLING CODE 4000–01–M

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule and agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: April 28 and 29, 1995, 9 a.m.–5 p.m.

ADDRESSES: Washington Marriott Hotel, 1221 22nd Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Marsha Harper, Telephone: (202) 401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12900 on February, 1994. The Commission is established to advise on Hispanic achievements of the

National Goals, as well as other educational accomplishments. The meeting of the Commission is open to the public. The Agenda includes:

April 28, 1995, Friday, 9 a.m.–5 p.m.

Introductions and Commission update; strategic planning for 1995 public hearings; discussion of legislative issues.

April 29, 1995, Saturday 9 a.m.–5 p.m.

Media and federal program inventory updates; review of outlines for topic analyses; creation of expert panels.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative For Hispanic Education at 600 Independence Avenue, S.W., Room 2115, Washington, D.C. 20202 from the hours of 9 a.m. to 5 p.m. Due to administrative difficulties, this notice was not able to make the legal deadline.

Dated: April 20, 1995.

Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 95–10201 Filed 4–21–95; 10:23 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet May 2, 1995, at the offices of the Organization for Economic Cooperation and Development (OECD) in Paris, France. The IAB also will meet May 3–4 at the OECD to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions on the same dates at the OECD offices.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue SW., Washington, DC. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 2, 1995, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Introductory Remarks
2. Approval of Agenda
3. Approval of the IAB Record Notes of Meetings on February 21, 1994; April 21, 1994; September 20, 1994; and January 30, 1995
4. Governing Board Decision on Emergency Response Policies
5. Legislative Developments in Member Countries
   —Energy Policy and Conservation Act (U.S.)
6. Emergency Reference Guide
7. Industry Supply Advisory Group Training
8. Preparation for October/November 1995 Test Submission of Questionnaires A and B
9. SEQ Work Program
   —Status of 1995 Work Program
   —Proposals for the 1996 Work Program
10. Emergency Response Issues Related to Refining and Oil Products
    —Aviation Fuel
    —Progress of SEQ/Standing Group on Oil Market Study on Product Specifications and Related Issues
11. Emergency Response Reviews of Member Countries
    —Draft Revised Questionnaire
    —Tentative Schedule of Reviews
12. Emergency Response Issues in IEA Candidate Countries
    —Revision of the Strategic Stock Building Plan of Korea
    —Participation in SEQ and IAB Activities by Candidate Countries
13. Communication Systems
14. Future Work

II. A meeting of the IAB will be held on May 3–4, 1995, at the OECD offices, beginning at 9:30 a.m. on May 3. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD on these dates. The agenda for the meeting of the SEQ is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda
2. Approval of Summary Record of the 83rd Meeting
3. SEQ Work Program
   —Preparations for Governing Board Meeting at Ministerial Level
   —Proposals for 1996 Work Program
4. Proposals on IEA Emergency Response
   —Report by Chairman of the SEQ on Governing Board Decision of February 22, 1995 and Proposals for Follow-up by the SEQ
5. Emergency Reserve Situation of IEA Countries
   —Emergency Reserve and Net Import Situation of IEA Countries on October 1, 1994
   —Emergency Reserve and Net Import Situation of IEA Countries on January 1, 1995
   —Report to the Governing Board on the Emergency Reserve Situation of IEA Countries on October 1, 1994
6. IAB Activities
   —IAB Activities, including IAB Meeting of May 2, 1995
   —ISAG Training Program of June 1995
7. Emergency Response Reviews
   —Draft Revised Questionnaire
   —Tentative Schedule of Reviews
8. The Emergency Response Issues in IEA Candidate Countries
   —Revision of the Strategic Stock Building Plan of Korea
   —Participation in SEQ Activities by Candidate Countries
9. Oil Market Situtation
10. Natural Gas Security Study
11. Coordinated Emergency Response Measures (CERM) Conference/Test
    —Discussion of agenda and work program for preparation of the CERM Conference/Test to be held in September 1995
12. World Energy Outlook 1995 Update and Publications
    —Future Oil Product Demand Patterns and Supply Sources
13. Emergency Data System and Related Questions
    —Preparations for October/November 1995 Test Submission of Questionnaires A and B
    —Questionnaires A and B
    —Monthly Oil Statistics (MOS) for November 1994
    —MOS for December 1994
    —MOS for January 1995
    —Base Period Final Consumption—Q194–Q494
    —Quarterly Oil Forecast Q195/Q495; Q295/Q196 and Current Trigger Situation
14. Emergency Response Issues Related to Oil Product and Refining Issues
    —SEQ/SOM Study on Product Specifications and Related Issues
15. Policy and Legislative Developments in Member Countries
    —Energy Policy and Conservation Act (U.S.)
    —Other Country Developments
16. Any Other Business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), these meetings are open only to

representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, DC., April 19, 1995.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 95–10165 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–17–NG]

Brewton Corp; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Brewton Corporation authorization to import up to 20 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 12, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–10164 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–20–NG]

KCS Energy Marketing, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting KCS Energy Marketing, Inc. authorization to import up to 50 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after April 10, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 12, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–10163 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of February 27 Through March 3, 1995

During the week of February 27 through March 3, 1995, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Cowles Publishing Company, 2/28/95, VFA–0010

Cowles Publishing Company (Cowles) filed an Appeal from a denial by the DOE's Richland Operations Office (Richland) of a request for information submitted under the Freedom of Information Act (FOIA). Cowles sought three legal memoranda written in 1963 by an attorney employed by General Electric d/b/a Hanford Atomic Products Operation (GE/Hanford). The three memoranda concerned GE's potential liability for ''Voluntary and Planned'' human radiation experiments. GE/Hanford was the management and operations contractor at DOE's Hanford, Washington facility from the 1940s until the mid 1960s when Battelle Memorial Institute (Battelle) assumed GE/Hanford's research and development functions. The three withheld records had been transferred to Battelle during the transition period between the two contractors. The memoranda were withheld by Richland because they were not ''agency records'' and, even if ''agency records'', were protected by the attorney-client privilege component of FOIA Exemption 5. On appeal, the DOE found that the memoranda are neither ''agency records'' within the meaning of the FOIA, nor subject to the FOIA under a new DOE contractor records regulation at 10 CFR 1004.3(e), 59 FR 63,884 (December 12, 1994). Although the DOE found that it owns the documents under the DOE/GE contract and the DOE/Battelle contract, it concluded that the documents are protected by the attorney-client communications privilege and the attorney work product privilege. The DOE also found that because the DOE, GE and Battelle share a ''common legal interest'' in the documents and because the requirements for finding waiver were not met, the documents have maintained their privileged status. Accordingly, the DOE denied Cowles' FOIA Appeal.

Kenneth W. Warden, 3/1/95, VFA–0023

Kenneth W. Warden filed an Appeal from a partial denial by the DOE's Oak Ridge Operation's Office of a Request for Information that he had submitted under the Freedom of Information Act (FOIA). Two documents had been withheld pursuant to Exemption 6. In considering the Appeal, the DOE found that the public's interest in disclosure of the documents was slight in comparison with the privacy interest of the individuals mentioned in the documents. Accordingly, the Appeal was denied.

Request for Exception

Commonwealth Oil Refining Company, Inc., 2/27/95, LEE–0002

Commonwealth Oil Refining Company, Inc. filed an Application for Exception in which the firm requested relief based on the delay in its receipt of exception relief pursuant to a 1978 exception application. In considering the request, the DOE found that Corco's claim did not form the basis for an independent grant of exception relief. The DOE further found that modification of the original grant of relief was unwarranted on the grounds, inter alia, that the delays in the case were largely the result of Corco's litigation strategy, that the receipt of relief in 1978 would not have permitted the survival of Corco's refinery and petrochemical operations, and that Corco was actually better off as the result of its receipt of relief in 1989 and 1994. Accordingly, exception relief was denied.

Refund Applications

County of Los Angeles CAO/Purchasing and Stores Department, et al., 3/3/95, RF272–29545, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by various departments of the County of Los Angeles in the crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205, subpart V. The DOE rejected

comments filed by a group of Utilities, Transporters, and Manufacturers, finding that the arguments presented were without merit. The DOE then determined, after adjustment for overlapping volume claims, that the corrected claims were meritorious and granted a refund of $64,302.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Air Molokai, Ltd.	RC272–283	03/03/95
Baltimore Storage Company	RA272–68	03/03/95
City of Burnsville et al	RF272–97501	03/03/95
Continental Grain Company	RC272–282	03/03/95
Continental Grain Company	RC272–281	03/03/95
Frontier Airlines	RC272–280	03/03/95
G & J Freight, Inc	RA272–66	03/03/95
Gulf Oil Corporation/Southeastern Freight Lines Inc et al	RF300–21305	02/27/95
Hamilton Hybar Inc	RF272–92579	03/01/95
Adhesives & Chemicals, Inc	RF272–92776	
Hudson River & Conf. Ctr.	RA272–67	03/03/95
Lambert Oil Co., Inc.	RR272–180	02/27/95
Moran Coal Co., Inc	RF272–91542	03/01/95
Red Top Coach, Inc	RF272–91665	
Container Corp. of America	RF272–98199	
Mort Hall Ford, Inc	RC272–284	03/03/95
Rhea County Dept. of Education et al	RF272–86753	03/03/95
Roundy's, Inc	RF272–97218	03/03/95
Superior Water, Light and Power Company	RF272–96593	02/27/95
Texaco Inc./Doug's Texaco	RF321–21059	03/03/95
Texaco Inc./Valley Seeding Co., Inc. et al	RF321–12851	02/27/95
Texaco Inc./Wiesenthal's Texaco Service et al	RF321–20522	03/03/95
Town of North Hempstead et al	RF272–96544	02/27/95
Wilkinson County et al	RF272–86105	03/03/95

Dismissals

The following submissions were dismissed:

Name	Case No.
A.J. Cole & Sons, Inc	RF315–9584
Albuquerque Operations Office	VSO–0017
Albuquerque Operations Office	VSO–0004
Chicago West Pullman & Southern Railroad	RF321–19762
Doan's Texaco	RF321–20519
Food Services, Inc	RF272–93662
Givens Texaco	RF321–6740
Hill Aircraft & Leasing Corp	RF351–00030
Kevork Texaco	RF321–9622
Stofa's Texaco	RF321–7238
W. & J. Propane Gas, Inc	RF304–14999

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–10158 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of April 3 Through April 7, 1995

During the week of April 3 through April 7, 1995, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of

Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: April 18, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Pitcher Sales Inc. Lewiston, Utah Reporting Requirements VEE–0004

Pitcher Sales, Inc. (Pitcher) filed an Application for Exception from the provision of filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report'' and Form EIA–863, entitled ''Petroleum Product Sales Identification Survey.'' The Exception request, if granted, would relieve Pitcher from the obligation of filing Form EIA–782B and Form EIA–863. On April 4, 1995, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 95–10159 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of March 6 Through March 10, 1995

During the week of March 6 through March 10, 1995, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Tom's Countryside Gulf	RF300–21597	03/09/95
A–1 Gulf	RF300–21598	
City of Westbrook	RF300–21705	
Texaco Inc./Penn Mart Texaco et al	RF321–16971	03/09/95
Texaco Inc./Ron Garrett's Texaco et al	RF321–18209	03/09/95

Dismissals

The following submissions were dismissed:

Name	Case No.
A. Scott Hartman Texaco	RF321–20468
AG Pro Co-Op	RF272–97230
Bailey's Texaco	RF321–19770
Ballard Gulf	RF300–21304
Cape Giradeau S.D. No. 63	RF272–88990
Capital Transport Company, Inc	RF272–97066
Cedar Flats Texaco	RF321–20686
Elliot Tire Distributors	RF304–14109
Farmers Cooperative Co	RF272–92417
Feaster & Sons Oil Distributors, Inc	RF321–20701
Flasher Farmers Union Oil Co	RF272–92082
Guthrie County Rural Electric Coop	RF272–92053
Hank's Texaco in Aromas	RF321–17141
Hank's Texaco on Abbott	RF321–17140
Hunter Grain Company	RF272–97255
M.G. Inc	RF272–94045
Peh Texaco	RF321–16969
Plains Equity Exchange & Coop	RF272–92079
Princeton Circle	RF321–16973
Union Oil Company of Maine, Inc	RF321–20609
Woodbury County Rural Electric Co	RF272–92008

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–10160 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of January 30 Through February 3, 1995

During the week of January 30 through February 3, 1995 the decisions and orders summarized below were issued with respect to appeals and for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Lloyd Makey, 2/1/95, VFA–0019

Lloyd Makey filed an Appeal from a determination issued to him by the Assistant Inspector General for Investigations. In that determination, the Assistant Inspector General released several documents responsive to Mr. Makey's request under the Freedom of Information Act. In his Appeal, Mr. Makey contended that the DOE search was inadequate. In considering the Appeal, the DOE confirmed that the Assistant Inspector General followed procedures which were reasonably calculated to uncover responsive documents. Accordingly, the DOE denied the Appeal.

Requests for Exception

Coker Oil, Inc., 2/2/95, LEE–0161

Coker Oil, Inc., filed an Application for Exception from the requirement that it file Form EIA–782B, the ''Reseller/Retailer's Monthly Petroleum Product Sales Report.'' The DOE found that the firm was not affected by the reporting requirement in a manner different from other similar firms, and consequently was not experiencing a special hardship, inequity, or unfair distribution of burdens. Accordingly, the firm's Application for Exception was denied.

John E. Retzner Oil Co., Inc., 1/30/95, LEE–0147

John E. Retzner Oil Company, Inc. (Retzner) filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The DOE issued a Proposed Decision and Order on November 4, 1994, that would deny Retzner's application. Retzner filed a Statement of Objections to that Proposed Decision and Order. In the course of reviewing Retzner's objections, the DOE discovered that Retzner's selection in the current sample group of firms required to file Form EIA–782 was the result of a record-keeping error, by which Retzner had been listed twice on the list of firms eligible to participate in the survey. Accordingly, the DOE issued a final Decision and Order granting Retzner's Application for Exception.

Keith E. Downard, 1/30/95, LEE–0128

Keith E. Downard filed an Application for Exception from filing Form EIA–782B, ''Resellers'/Detailers' Monthly Petroleum Product Sales Report''. In considering the request, the DOE found that the firm was not suffering any serious hardship, gross inequity, or unequal distribution of burdens. Accordingly, exception relief was denied.

Personnel Security Hearing

Albuquerque Operations Office, 1/31/95, VSO–0002

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. After carefully considering the record of the proceeding in view of the standards set forth in 10 C.F.R. part 710, the Hearing Officer found that the individual: (i) Had omitted significant information from a Questionnaire for Sensitive Positions and from a personnel security interview; (ii) had been diagnosed by a board-certified psychiatrist as having two mental disorders which could cause a significant defect in the individual's judgment or reliability; (iii) was a user of alcohol habitually to excess; (iv) had possessed and used illegal substances, i.e., marijuana and cocaine; and (v) had exhibited conduct that shows that he is not honest, reliable, or trustworthy. The Hearing Officer rejected the individual's arguments that he had been improperly diagnosed under Diagnostic and Statistical Manual III-R criteria and that the psychiatrist who evaluated him was biased. The Hearing Officer further found no evidence of significant rehabilitation or reformation regarding the individual. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be granted.

Implementation of Special Refund Procedures

King Petroleum, Inc. et al., Billy Bridewell, William J. Cobb, et al., 2/1/95, LEF–0125, LEF–0126

The DOE issued a final Decision and Order setting forth refund procedures for the distribution of $337,022.86, plus accrued interest, obtained from King Petroleum, Inc., et al. (King), and Billy Bridewell and William J. Cobb, et al. (Bridewell), in settlement of proceedings relating to violations of the mandatory petroleum price and allocation regulations. The DOE determined that the funds would be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states (40%), the federal government (40%), and injured purchasers of refined products (20%).

Supplemental Order

David Ramirez, 1/30/95, VWX–0001

A Hearing Officer of the Office of Hearings and Appeals issued a final order awarding $38,695.25 for attorney fees and disbursements in a ''whistleblower'' case under the DOE's Contractor Employee Protection Program, 10 C.F.R. part 708. In prior Decisions, the Hearing Officer found that Brookhaven National Laboratory (BNL) violated the part 708 regulations by directing that David Ramirez, a subcontractor employee, be laid off in reprisal for his making protected safety disclosures, and awarded Mr. Ramirez back pay and reimbursement for all costs and expenses reasonably incurred by him in bringing his complaint, including the legal services rendered in the review phase of the proceeding. The present Decision approves the attorney's fees request except for the period of time in which the attorney engaged in clerical tasks. For that period, the Decision approves payment at the rate of $10 per hour, and not at the approved rate for legal services, $175 per hour.

Refund Applications

Burnup & Sims, Inc., 2/1/95, RA272–65

The DOE granted an Application for a Supplemental Refund from crude oil overcharge funds to Burnup & Sims, Inc., based upon documentation demonstrating that the purchase volume approved for it in a December 19, 1994 Decision was incorrect.

LPS Laboratories, Inc., 1/30/95, RF272–97045

LPS Laboratories, Inc., applied for a refund in the Subpart V crude oil refund proceeding for purchases of mineral spirits and propane used in its chemical manufacturing business. Because of the volume of mineral spirits in certain products, we determined that LPS was a reseller. LPS did not make a detailed showing of injury, and therefore the portion of LPS's Application for mineral spirits was ineligible for a refund. Furthermore, LPS did not show that its purchases of propane, which it used in a rust inhibitor, were separate and distinct from its reseller operations. Therefore, LPS was not eligible to use the end-user presumption of injury, and the entire refund was denied.

Tesoro Petroleum Corporation/Fletcher Oil Company, 2/2/95, RF326–2851

Fletcher Oil Company filed an Application for Refund in the Tesoro Petroleum Corporation special refund proceeding. Fletcher sought an above-volumetric refund based upon a claim that it suffered a disproportionate injury with respect to its purchases of No. 2 fuel oil. Fletcher alleged that Tesoro had violated the normal business practices rule by requiring that it take delivery of the fuel oil in Alaska and pay the freight from Alaska to Seattle. Fletcher, however, failed to show that its combined purchase price and freight charge was higher than the lawful price that Tesoro could have charged for the fuel oil if it had been delivered to Seattle. Furthermore, the record indicated that Fletcher's delivered cost of fuel oil from Tesoro was lower than the average cost from other suppliers in Fletcher's marketing area. Fletcher, therefore, failed to demonstrate that its Tesoro purchases placed it at a competitive disadvantage. The DOE found that Fletcher should be granted a volumetric refund. However, since evidence submitted by Fletcher

indicated that the firm's banks of increased fuel oil costs were negative until September 1974, Fletcher's purchases between November 1973 and September 1974 were excluded from the calculation of its volumetric refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bulkmatic Transport Company	RF272–94066	01/31/95
Clay Central Community School et al	RF272–82481	02/03/95
Farmers Co-Op et al	RF272–85657	02/03/95
Green Bay Food Co. et al	RF272–93697	01/31/95
Gulf Oil Corporation/George C. Miller Brick Co., Inc	RF300–21660	01/31/95
Rutherford East	RF300–21672	
Rutherford	RF300–21673	
Gulf Oil Corporation/Jumping Brook Gulf et al	RF300–21511	02/01/95
Gulf Oil Corporation/North Jackson Aviation, Inc.	RF300–18401	02/03/95
Hampshire County Board of Education et al	RF272–86905	02/03/95
Revere Copper & Brass Inc. et al	RF272–90844	02/01/95
Texaco Inc./Higgins Texaco	RF321–21055	02/03/95
Texaco Inc./Jamul Texaco et al	RF321–20454	01/31/95
Texaco Inc./Johnson & Hurlock Texaco et al	RF321–18299	02/03/95
Texaco Inc./Riverview Super Service	RF321–13116	02/02/95
Texaco Inc./Rubidoux Texaco et al	RF321–20399	02/01/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Aircomfort, Inc	RF272–94643
Brooks Products, Inc	RF272–93525
City of Corry	RF272–85888
City of Covina	RF272–85997
City of Dinuba	RF272–85954
City of Hamlin	RF272–85998
City of Mason City	RF272–85825
City of Poquoson	RF272–96998
Dakota County	RF272–85086
Ewing's Texaco	RF321–20545
Lamar County	RF272–85920
Mongtomery County	RF272–85996
Pace's Texaco	RF321–20586
Simmons Pole & Piling	RF300–18835
Township of Glen Ridge	RF272–85949
Township of W. Manchester	RF272–85943
Village of Cornwall-on-Hudson	RF272–85889
Village of Great Neck Plaza	RF272–85990

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: April 18, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–10161 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order; Week of March 13 Through March 17, 1995

During the week of March 13 through March 17, 1995, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234,

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: April 18, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Home Oil Co., Inc., Ashford, AL, LEE–0135, Reporting Requirements

Home Oil Co., Inc. (Home Oil), filed an Application for Exception from filing Form EIA–782B, ''Reseller's/Retailers' Monthly Petroleum Products Sales Report.'' The exception request, if granted, would relieve Home Oil from filing the Form. On March 13, 1995, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 95–10162 Filed 4–24–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–235–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

April 19, 1995.

Take notice that on April 13, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of May 13, 1995:

Twentieth Revised Sheet No. 20A
Original Sheet No. 98H

Algonquin states that the purpose of this filing is to (i) recover upstream transition costs of $19,785.39 billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern), (ii) recover Order No. 528 upstream costs of $706.19 billed to Algonquin by Texas Eastern and (iii) flow through a refund of Order No. 528 upstream costs of $22,276.40 allocated to Algonquin by Texas Eastern. Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10095 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–195–002]

Columbia Gulf Transmission Company; Compliance Filing

April 19, 1995.

Take notice that on April 13, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing in compliance with the Commission's March 29, 1995, letter order in this proceeding. On March 1 and March 13, 1995, Columbia Gulf submitted tariff sheets reflecting an annual Transportation Retainage Adjustment (TRA). The March 29, 1995 letter order accepted and suspended those filings to be effective April 1, 1995, subject to Columbia Gulf providing additional explanation and data.

Columbia Gulf states that in this compliance filing it is providing additional workpapers, supporting data and explanations as required by the March 29, 1995 letter order.

Columbia Gulf states that copies of this filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before April 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10097 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–157–004 and RP95–196–002]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

April 19, 1995.

Take notice that on April 13, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective April 1, 1995.

Second Revised Sheet No. 453

Columbia states that the instant filing is being made in compliance with the Commission's order issued March 17, 1995, in Docket Nos. RP94–157, et al. Ordering Paragraph (C) required that within 30 days from the date of the order, Columbia make a tariff filing to modify the Transportation Costs Recovery Adjustment (TCRA) mechanism as discussed in the body of the order. Specifically, the order required Columbia to revise its TCRA, on a prospective basis, to require Columbia to include its estimate of capacity release revenue when projecting its stranded Account Number 858 costs in future TCRA filings. Columbia states that Sheet No. 453 revises the language in Section 36.3(1) of its General Terms and Conditions (GTC) in accordance with this requirement.

Columbia states that copies of its filing have been mailed to each of its firm customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10098 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–196–001]

Columbia Gas Transmission Corporation; Compliance Filing

April 19, 1995.

Take notice that on April 13, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1995.

Second Revised Sheet No. 395
Second Revised Sheet No. 452
Third Revised Sheet No. 453

On March 1, 1995, Columbia filed tariff sheets initiating the proceeding in Docket No. RP95–196–000 and implementing its annual filing pursuant to the Transportation Cost Rate Adjustment (TCRA) mechanism in Section 36 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. The Commission issued an order in this proceeding on March 30, 1995, accepting and suspending those tariff sheets effective April 1, 1995, subject to refund and conditions. (See, 70 FERC ¶ 61,364 (1995).)

Columbia states that the instant filing is being made to address and comply with Ordering Paragraphs (B), (C), and (D) in that order.

Columbia states that copies of its filing have been mailed to each of its firm customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedigs. 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. 95–10096 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ95–2–23–001]

Eastern Shore Natural Gas Company; Filing of Corrected Tariff Sheets

April 19, 1995.

Take notice that on April 12, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain substitute revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1995.

On April 3, 1995, ESNG filed revised tariff sheets in Docket No. TQ95–2–23–000, its regularly scheduled quarterly PGA filing, proposed to be effective May 1, 1995. ESNG, however, inadvertently used as its starting point the cumulative commodity gas cost adjustment contained in Docket No. TF95–4–23–000, *et al.*, effective February 1, 1995 (an interim PGA filing). The proper cumulative commodity gas cost adjustment to track was established in Docket No. TQ95–1–23–000, *et al.* (its regularly scheduled quarterly PGA filing), effective February 1, 1995.

ESNG states that the result of this error was an understatement of $0.1209 per dt in ESNG's Commodity sales rates. The tariff sheets contained in this filing correct the tracking error and are filed to substitute for the ones originally filed, to be effective May 1, 1995.

ESNG states that copies of its filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before April 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10092 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2659 Oregon]

PacifiCorp; Intent to File an Application for a New License

April 19, 1995.

Take notice that PacifiCorp, the existing licensee for the Powerdale Hydroelectric Project No. 2659, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2659 was issued effective April 1, 1962 and expires February 28, 2000.

The project is located on the Hood River in Hood River County, Oregon. The principal works of the Powerdale Project include a concrete gravity dam, 206 feet long and 10 feet high with overflow spillway sections; a 5 acre impoundment; a concrete power canal intake structure to a concrete lined canal and a wood flume; a 14,354-foot-long pipeline, with a surge tank, to the Powerdale Powerhouse containing a single 6000-Kw generator; a 7.2-kV transmission line to a switchyard; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 920 SW. 6th Avenue, Portland, Oregon 97204, phone (503) 464–5343.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10093 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–323–000]

Viking Gas Transmission Company; Request Under Blanket Authorization

April 19, 1995.

Take notice that on April 13, 1995, Viking Gas Transmission Company (Viking), 825 Rice Street, St. Paul, Minnesota 55117, filed in Docket No. CP95–323–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to relocate an existing delivery point for firm transportation services that Viking currently provides for Minnegasco (Minnegasco) under Viking's blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking proposes to relocate an existing delivery point, for firm transportation services that Viking currently provides for Minnegasco, from Anoka County, Minnesota to Isanti County, Minnesota. It is stated that Minnegasco has requested deliveries of up to 50,350 Mcfd of gas at this point,

and that it has agreed to reimburse Viking for the costs of the facilities.

It is also stated that the total quantities are within authorized quantities and the delivery point would be of no detriment to any of Viking's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10094 Filed 4–24–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5196–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 25, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740, please refer to EPA ICR #107.05.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Source Compliance and State Action Reporting (EPA ICR #107.05; OMB #2060–0096). This ICR requests renewal of the existing clearance.

Abstract: State, District, Commonwealth, and territorial governments make air compliance information available to EPA on a quarterly basis via input to the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS). The information provided to EPA includes compliance determinations and compliance activities. EPA uses this information to assess progress toward meeting emission requirements developed under the authority of the Clean Air Act to protect and maintain the atmospheric environment and the public health. All ten EPA Regional Offices and most of the 55 State, District, Commonwealth and territorial governments use the compliance information in AFS on a daily basis for managing activities of their air pollution control programs.

Burden Statement: Public reporting burden for this collection of information is estimated to average 224 hours per small state, 1692 hours per medium state and 1700 hours per large state annually per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, completing the collection of information, and maintaining records.

Respondents: State, District, Commonwealth, and Territorial air pollution control agencies.

Estimated Number of Respondents: 55.

Estimated Total Annual Burden on Respondents: 58,686 hours.

Frequency of Collection: quarterly.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #107.05 and OMB #2060–0096) to:

Sandy Farmer,
EPA ICR #107.05,
U.S. Environmental Protection Agency,
Information Policy Branch (2136),
401 M Street SW.,
Washington, DC 20460

and

Chris Wolz,
OMB #2060–0096,
Office of Management and Budget,
Office of Information and Regulatory Affairs,
725 17th Street NW.,
Washington, DC 20503.

Dated: April 18, 1995.

Joseph Retzer,

Chief, Regulatory Information Division.

[FR Doc. 95–10142 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5196–3]

Public Water System Supervision Program Revision for the State of Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provision of Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Michigan is revising its approved Public Water System Supervision (PWSS) primacy program. The Michigan Department of Public Health (MDPH) has adopted drinking water regulations for Lead and Copper, 18 synthetic organic chemicals (SOCs), and 5 inorganic chemicals (IOCs), that correspond to the NPDWR for Lead and Copper, SOCs, and IOCs, and promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 7, 1991 (56 FR 26460–26564), and on July 17, 1992 (57 FR 31776–31849). The USEPA has completed its review of Michigan's PWSS primacy program revision.

The USEPA has determined that the Michigan rule revisions meet the requirements of the Federal rule. Therefore, the USEPA has determined that the State program revisions referenced above are no less stringent than the corresponding Federal regulations and is proposing to approve the MDPH's rule revisions.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before May 25, 1995. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for public hearing should be addressed to: Jennifer Kurtz Crooks, (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's

interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Michigan. A notice will be sent to the person(s) requesting the hearing as well as to the State of Michigan. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on May 25, 1995. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Michigan Department of Health, Division of Water Supply, Michigan Department of Public Health, 3423 North Logan/Martin L. King, Jr. Blvd., P.O. Box 30195, Lansing, Michigan 48909.

State Docket Officer: Mr. James K. Cleland, (517) 335–9216.

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Jennifer Kurtz Crooks, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–0244.

(Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 11th day of April, 1995.

Valdas V. Adamkus,

Regional Administrator, USEPA, Region 5.

[FR Doc. 95–10145 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 95–07]

SHIPCO Transport Inc. v. Saturn Air Sea Cargo; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Shipco Transport Inc. (''Complainant'') against Saturn Air Sea Cargo (''Respondent'') was served April 19, 1995. Complainant alleges that Respondent has violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(a)(1), by failing to pay to complainant ocean freight due on numerous shipments of cargo and, through bad faith and deceitful misrepresentations, inducing complainant to relinquish possessory liens over the cargo.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 19, 1996, and the final decision of the Commission shall be issued by October 21, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10083 Filed 4–24–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Union Corporation; Notice to Engage in Certain Nonbanking Activities

First Union Corporation, Charlotte, North Carolina (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage through its subsidiary, First Union Capital Markets Corp., Charlotte, North Carolina (Company), in underwriting and dealing in debt and equity securities of all types, other than shares of open-end investment companies, and acting as advisor with respect to swaps, caps and similar instruments based on commodities; stock, bond or commodities indices; or a hybrid of interest rates and such commodities or indices. These activities will be conducted nationwide.

Notificant maintains that the Board previously has determined that the proposed activities are closely related to banking. *See Canadian Imperial Bank of Commerce*, 76 Federal Reserve Bulletin 158 (1990); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); and *Citicorp, et al.*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988); *Swiss Bank Corporation*, 81 Federal Reserve Bulletin 185 (1995). Notificant states that Company would conduct the proposed activities within the limitations and prudential guidelines established by the Board in previous orders.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. § 1843(c)(8). Notificant believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Notificant maintains that the proposal would enhance competition and enable Notificant to offer its customers a broader range of products. Notificant also maintains that its proposal would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of

interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 15, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, April 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-10117 Filed 4-24-95; 8:45 am]

BILLING CODE 6210-01-F

Northwest Bancorp, 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 May 19, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Northwest Bancorp, MHC, Warren, Pennsylvania; to acquire 100 percent of the voting shares of Jamestown Savings Bank, Lakeview, New York, a de novo bank.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Greater Brazos Valley Bancorp, Inc., College Station, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Greater Brazos Valley Delaware Bancorp, Inc., Dover, Delaware, and thereby indirectly acquire Commerce National Bank, College Station, Texas.

In connection with this application Greater Brazos Valley Delaware Bancorp, Inc., Dover, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Commerce National Bank, College Station, Texas.

Board of Governors of the Federal Reserve System, April 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-10118 Filed 4-24-95; 8:45 am]

BILLING CODE 6210-01-F

Wilmington Trust Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Wilmington Trust Corporation, Wilmington, Delaware; to acquire Wilmington Trust of Florida, Stuart, Florida, and thereby engage in certain trust activities through a subsidiary, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Brazosport Corporation, Corpus Christi, Texas; to acquire First Commerce Mortgage Corporation, Corpus Christi, Texas, and thereby engage in making, acquiring, or servicing loans for itself or for others, and loan marketing and advisory services, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is Corpus Christi, Texas; the Brazosport area (which includes Freeport, Lake Jackson, Clute, and Richwood, Texas); and adjacent areas.

Board of Governors of the Federal Reserve System, April 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-10119 Filed 4-24-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Civil Rights

Administration for Children and Families

Policy Guidance on the Use of Race, Color or National Origin as Considerations in Adoption and Foster Care Placements

AGENCY: Office for Civil Rights; Administration for Children and Families; HHS.

ACTION: Policy guidance.

SUMMARY: The United States Department of Health and Human Services (HHS) is publishing policy guidance on the use of race, color, or national origin as considerations in adoption and foster care placements.

DATES: The guidance is effective on April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Carol Williams or Dan Lewis (ACF) at 202–205–8618 or Ronald Copeland (OCR) at 202–619–0553; TDD: 1–800–537–7697. Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: The Improving America's Schools Act, Pub. L. No. 103–382, 108 Stat. 3518, contains the Multiethnic Placement Act of 1994 (hereinafter referred to as ''the Act''). The Act directs the Secretary to publish guidance to concerned public and private agencies and entities with respect to compliance with the Act. Section 553, 108 Stat. 4057 (to be codified at 42 U.S.C. § 5115a). This guidance carries out that direction.

The policy guidance is designed to assist agencies, which are involved in adoption or foster care placements and which receive Federal assistance, in complying with the Act, the U.S. Constitution and Title VI of the Civil Rights Act of 1964. The guidance provides, consistent with those laws, that an agency or entity that receives Federal financial assistance and is involved in adoption or foster care placements may not discriminate on the basis of the race, color or national origin of the adoptive or foster parent or the child involved. The guidance further specifies that the consideration of race, color, or national origin by agencies making placement determinations is permissible only when an adoption or foster care agency has made a narrowly tailored, individualized determination that the facts and circumstances of a particular case require the consideration of race, color, or national origin in order to advance the best interests of the child in need of placement.

In addition to prohibiting discrimination in placements on the basis of race, color or national origin, the Act requires that agencies engage in diligent recruitment efforts to ensure that all children needing placement are served in a timely and adequate manner. The guidance sets forth a number of methods that agencies should utilize in order to develop an adequate pool of families capable of promoting each child's development and case goals.

Covered agencies or entities must be in full compliance with the Act no later than six months after publication of this guidance or one year after the date of the enactment of this Act, whichever occurs first, i.e., October 21, 1995. Under limited circumstances outlined in the guidance, the Secretary of HHS may extend the compliance date for states able to demonstrate that they must amend state statutory law in order to change a particular practice that is inconsistent with the Act. The guidance explains in detail the vehicles for enforcement of the Act's prohibition against discrimination in adoption or foster care placement.

The text of the guidance appears below.

Dated: April 20, 1995.

Dennis Hayashi,

Director, Office for Civil Rights.

Dated: April 20, 1995.

Mary Jo Bane,

Assistant Secretary, Administration for Children and Families.

Policy Guidance—Race, Color, or National Origin as Considerations in Adoption and Foster Care Placements

Background

On October 20, 1994, President Clinton signed the ''Improving America's Schools Act of 1994,'' Public Law 103–382, which includes among other provisions, Section 551, titled ''The Multiethnic Placement Act of 1944'' (MEPA).

The purposes of that Act are: to decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children on the basis of race, color, or national origin; and to facilitate the identification and recruitment of foster and adoptive parents who can meet children's needs.

To accomplish these goals the Act identifies specific impermissible activities by an agency or entity (agency) which receives Federal assistance and is involved in adoption or foster care placements. The law prohibits such agencies from ''categorically denying to any person the opportunity to become an adoptive or foster parent solely on the basis of the race, color, or national origin of the adoptive or foster parent or the child'' and ''from delaying or denying the placement of a child solely on the basis of race, color, or national origin of the adoptive or foster parent or parents involved.'' Under the Act, these prohibitions also apply to the failure to seek termination of parental rights or otherwise make a child legally available for adoption.

The law does permit an agency to consider, in determining whether a placement is in a child's best interests, ''the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background.'' If an agency chooses to include this factor among those to be considered in making placement decisions, it must be considered in conjunction with other factors relevant to the child's best interests and must not be used in a manner that delays the placement decision.

The Act also seeks to ensure that agencies engage in active recruitment of potential foster and adoptive parents who reflect the racial and ethnic diversity of the children needing placement. Section 554 of the Act amends Section 422(b) and Part A of Title XI of the Social Security Act. The amendment specifies the following requirements for child welfare services programs: ''[Each plan for child welfare services under this part shall . . .] (9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.''

The Multiethnic Placement Act is to be viewed in conjunction with Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits recipients of Federal financial assistance from discriminating based on race, color, or national origin in their programs and activities and from operating their programs in ways that have the effect of discriminating on the basis of race, color, or national origin.

The Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) in the Department of Health and Human Services (HHS) have the responsibility for implementing these laws. OCR has the responsibility to enforce compliance with Title VI and its implementing regulation (45 CFR part 80), as well as other civil rights laws. ACF administers programs of Federal financial assistance to child

welfare agencies and has responsibility to enforce compliance with the laws authorizing this assistance.

Private, as well as public, adoption and foster care agencies often receive Federal financial assistance, through State Block Grant programs, programs under Title IV–E of the Social Security Act, and discretionary grants. The assistance may reach an agency directly, or indirectly as a subrecipient of other agencies. Receipt of such assistance obligates recipients to comply with Title VI and other civil rights laws and regulations and with the requirements of the Social Security Act. Further, the Civil Rights Restoration Act of 1987 confers jurisdiction over entities any part of which receive any Federal funds.

This guidance is being issued jointly by ACF and OCR, pursuant to Section 553(a) of MEPA, to enable affected agencies to conform their laws, rules, and practices to the requirements of the Multiethnic Placement Act and Title VI.

Discussion

A. Race, Culture, or Ethnicity as a Factor in Selecting Placements

1. Impermissible Activities

In enacting MEPA, Congress was concerned that many children, in particular those from minority groups, were spending lengthy periods of time in foster care awaiting placement in adoptive homes.[1] At present, there are over twenty thousand children who are legally free for adoption but who are not in preadoptive homes. While there is no definitive study indicating how long children who are adoptable must wait until placement, the available data indicate the average wait may be as long as two years after the time that a child is legally free for adoption, and that minority children spend, on average, twice as long as non-minority children before they are placed. Both the number of children needing placements and the length of time they await placement increase substantially when those children awaiting termination of parental rights are taken into account.

MEPA reflects Congress' judgment that children are harmed when placements are delayed for a period longer than is necessary to find qualified families. The legislation seeks to eliminate barriers that delay or prevent the placement of children into qualified homes. In particular, it focuses on the possibility that policies with respect to matching children with families of the same race, culture, or ethnicity may result in delaying, or even preventing, the adoption of children by qualified families. It also is designed to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families, so that all children can be quickly placed in homes that meet their needs.

In developing this guidance, the department recognizes that states seek to achieve a variety of goals when making foster or adoptive placements. For example, in making a foster care placement, agencies generally are concerned with finding a home that the child can easily fit into, that minimizes the number of adjustments that the child, already facing a difficult situation, must face, and that is capable of meeting any special physical, psychological, or educational needs of the child. In making adoption placements, agencies seek to find homes that will maximize the current and future well-being of the child. They evaluate whether the particular prospective parents are equipped to raise the child, both in terms of their capacity and interests to meet the individual needs of the particular child, and the capacity of the child to benefit from membership in a particular family.

Among the factors that many state statutes, regulations, or policy manuals now specify as being relevant to placement decisions are the racial, ethnic, and cultural background of the child. Some states specify an order of preference for placements, which make placement in a family of the same race, culture, or ethnicity as the child a preferred category. Some states prescribe set periods of time in which agencies must try to place a child with a family of the same race, culture, or ethnicity before the children can be placed with a family of a different race, culture, or ethnicity. Some states have a general preference for same race or ethnicity placements, although they do not specify a placement order or a search period. And some states indicate that children should be placed with families of the same race or ethnicity provided that this is consistent with the best interests of the child.

Establishing standards for making foster care and adoption placement decisions, and determining the factors that are relevant in deciding whether a particular placement meets the standards, generally are matters of state law and policy. Agencies which receive Federal assistance, however, may use race, culture, or ethnicity as factors in making placement decisions only insofar as the Constitution, MEPA, and Title VI permit.

In the context of child placement decisions, the United States Constitution and Title VI forbid decision making on the basis of race or ethnicity unless the consideration advances a compelling governmental interest. The only compelling governmental interest, in this context, is protecting the ''best interests'' of the child who is to be placed. Moreover, the consideration must be narrowly tailored to advancing the child's interests and must be made as an individualized determination for each child. An adoption agency may take race into account only if it has made an individualized determination that the facts and circumstances of the specific case require the consideration of race in order to advance the best interests of the specific child. Any placement policy that takes race or ethnicity into account is subject to strict scrutiny by the courts to determine whether it satisfies these tests. *Palmore* v. *Sidoti*, 466 U.S. 429 (1984).

A number of practices currently followed by some agencies clearly violate MEPA or Title VI. These include statutes or policies that:

- Establish time periods during which only a same race/ethnicity search will occur;
- Establish orders of placement preferences based on race, culture, or ethnicity;
- Require caseworkers to specially justify transracial placements; or
- Otherwise have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity.

Other rules, policies, or practices that do not meet the constitutional strict scrutiny test would also be illegal.

2. Permissible Considerations

MEPA does specifically allow, but not require, agencies to consider ''the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background'' as one of the factors in determining whether a particular placement is in a child's best interests.

When an agency chooses to use this factor, it must be on an individualized basis. Agencies that provide professional adoption services usually involve prospective parents in an educative family assessment process designed to increase the likelihood of successful placements. This process includes providing potential adoptive parents with an understanding of the special needs of adoptive children, such as how children react to separation and

[1] MEPA applies to decisions regarding both foster care and adoption placements. In discussions regarding the bill, members of Congress focused primarily on problems related to adoption decisions.

maltreatment and the significance of the biological family to a child. Adoption specialists also assess the strengths and weaknesses of prospective parents. They help them decide whether adoption is the right thing for them and identify the kind of child the family thinks it can parent. Approved families are profiled, as are the waiting children.

When a child becomes available for adoption, the pool of families is reviewed to see if there is an available family suitable for the specific child.[2] Where possible, a number of families are identified and the agency conducts a case conference to determine which family is most suitable. The goal is to find the family which has the greatest ability to meet the child's psychological needs.[3] The child is discussed with the family, and decisions are made about the placement of the specific child with the family. This process helps prevent unsuccessful placements, and promotes the interest of children in finding permanent homes.

To the extent that an agency looks at a child's race, ethnicity, or cultural background in making placement decisions, it must do so in a manner consistent with the mode of individualized decision-making that characterizes the general placement process for all children. Specifically, in recruiting placements for each child, the agency must focus on that child's particular needs and the capacities of the particular prospective parent(s).

In making individualized decisions, agencies may examine the capacity of the prospective parent(s) to meet the child's psychological needs that are related to the child's racial, ethnic, or cultural background. This may include assessing the attitudes of prospective parents that relate to their capacity to nurture a child of a particular background. Agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss issues related to other characteristics, such as sex, age, or disability; nor are they prohibited from considering the expressed preference of the prospective parents as one of several factors in making placement decisions.

Agencies may consider the ability of prospective parents to cope with the particular consequences of the child's developmental history and to promote the development of a positive sense of self, which often has been compromised by maltreatment and separations. An agency also may assess a family's ability to nurture, support, and reinforce the racial, ethnic, or cultural identity of the child and to help the child cope with any forms of discrimination the child may encounter. When an agency is making a choice among a pool of generally qualified families, it may consider whether a placement with one family is more likely to benefit a child, in the ways described above or in other ways that the agency considers relevant to the child's best interest.

Under the law, application of the ''best interests'' test would permit race or ethnicity to be taken into account in certain narrow situations. For example, for children who have lived in one racial, ethnic, or cultural community, the agency may assess the child's ability to make the transition to another community. A child may have a strong sense of identity with a particular racial, ethnic, or cultural community that should not be disrupted. This is not a universally applicable consideration. For instance, it is doubtful that infants or young children will have developed such needs. Ultimately, however, the determination must be individualized. Another example would be when a prospective parent has demonstrated an inability to care for, or nurture self-esteem in, a child of a different race or ethnicity. In making such determinations, an adoption agency may not rely on generalizations about the identity needs of children of a particular race or ethnicity or on generalizations about the abilities of prospective parents of one race or ethnicity to care for, or nurture the sense of identity of, a child of another race, culture, or ethnicity. Nor may an agency presume from the race or ethnicity of the prospective parents that those parents would be unable to maintain the child's ties to another racial, ethnic, or cultural community.

B. Recruitment Efforts

As recognized in the Multiethnic Placement Act, in order to achieve timely and appropriate placement of all children, placement agencies need an adequate pool of families capable of promoting each child's development and case goals. This requires that each agency's recruitment process focuses on developing a pool of potential foster and adoptive parents willing and able to foster or adopt the children needing placement. The failure to conduct recruitment in a manner that seeks to provide all children with the opportunity for placement, and all qualified members of the community an opportunity to adopt, is inconsistent with the goals of MEPA and could create circumstances which would constitute a violation of Title VI.

An adequate recruitment process has a number of features. Recruitment efforts should be designed to provide to potential foster and adoptive parents throughout the community information about the characteristics and needs of the available children, the nature of the foster care and adoption processes, and the supports available to foster and adoptive families.

Both general and targeted recruiting are important. Reaching all members of the community requires use of general media—radio, television, and print. In addition, information should be disseminated to targeted communities through community organizations, such as religious institutions and neighborhood centers. The dissemination of information is strengthened when agencies develop partnerships with groups from the communities from which children come, to help identify and support potential foster and adoptive families and to conduct activities which make the waiting children more visible.

To meet MEPA's diligent efforts requirements, an agency should have a comprehensive recruitment plan that includes:

- A description of the characteristics of waiting children;
- Specific strategies to reach all parts of the community;
- Diverse methods of disseminating both general and child specific information;
- Strategies for assuring that all prospective parents have access to the home study process, including location and hours of services that facilitate access by all members of the community;
- Strategies for training staff to work with diverse cultural, racial, and economic communities;

[2] Among the child-related factors often considered are:

- The child's current functioning and behaviors;
- The medical, educational and developmental needs of the child;
- The child's history and past experience;
- The child's cultural and racial identity needs;
- The child's interests and talents;
- The child's attachments to current caretakers.

[3] Among the factors that agencies consider in assessing a prospective parent's suitability to care for a particular child are:

- Ability to form relationships and to bond with the specific child;
- The ability to help the child integrate into the family;
- The ability to accept the child's background and help the child cope with her or his past;
- The ability to accept the behavior and personality of the specific child;
- The ability to validate the child's cultural, racial and ethnic background;
- The ability to meet the child's particular educational, developmental or psychological needs.

• Strategies for dealing with linguistic barriers;

• Non-discriminatory fee structures; and

• Procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts, provided that such procedures must insure that placement of a child in an appropriate household is not delayed by the search for a same race or ethnic placement.

Agencies receiving Federal funds may not use standards related to income, age, education, family structure, and size or ownership of housing, which exclude groups of prospective parents on the basis of race, color, or national origin, where those standards are arbitrary or unnecessary or where less exclusionary standards are available.

Enforcement

As provided in Section 553(d)(1) of MEPA, covered agencies or entities are required to comply with the Act no later than six months after publication of this guidance or one year after the date of the enactment of this Act, whichever occurs first, i.e., October 21, 1995. Pursuant to Section 553(d)(2) of MEPA, if a state demonstrates to the satisfaction of the Secretary of HHS that it is necessary to amend state statutory law in order to change a particular practice that is inconsistent with MEPA, the Secretary may extend the compliance date for the state a reasonable number of days after the close of the first state legislative session beginning after April 25, 1995. In determining whether to extend the compliance date, the Secretary will take into account the constitutional standards described in Part A of this guidance. Because states need not enforce unconstitutional provisions of their laws, statutory amendments are not an essential precondition to coming into compliance with respect to any such provisions.

HHS emphasizes voluntary compliance with the law and recognizes that covered agencies may want further guidance on their obligations under these laws. Accordingly, HHS is offering technical assistance to any covered agency seeking to better understand and more fully comply with the Multiethnic Placement Act. Organizations wishing to be provided with technical assistance on compliance with the nondiscrimination provisions of MEPA should contact Ronald Copeland of OCR at 202–619–0553. Organizations wishing to be provided with technical assistance regarding required recruitment efforts should contact Carol Williams or Dan Lewis of the Administration on Children and Families at 202–205–8618.

The Multiethnic Placement Act provides two vehicles for enforcement of its prohibition against discrimination in adoption or foster care placement. First, pursuant to Section 553(b), any individual who is aggrieved by an action he or she believes constitutes discrimination in violation of the Act has the right to bring an action seeking equitable relief in a United States district court of appropriate jurisdiction. Second, the Act provides that noncompliance with the prohibition is deemed a violation of Title VI.

OCR has published regulations to effectuate the provisions of Title VI. 45 CFR part 80. Any individual may file a complaint with OCR alleging that an adoption or foster care organization funded by HHS makes placement decisions in violation of the Multiethnic Placement Act and Title VI. OCR may also initiate compliance reviews to determine whether violations have occurred. If OCR determines that an adoption or foster care organization makes discriminatory placement decisions, OCR will first seek voluntary compliance with the law. Should attempts at voluntary compliance prove unsuccessful, OCR will take further steps to enforce the law.

These steps may involve referring the matter to the Department of Justice with a recommendation that appropriate court proceedings be brought. HHS may also initiate administrative proceedings leading to the termination of the offending agency's Federal financial assistance. These proceedings include the opportunity for a covered agency or entity to have a hearing on any OCR findings made against it. 45 CFR 80.8.

At any point in the complaint investigation process or during the pendency of fund termination proceedings, organizations may agree to come into voluntary compliance with the law. OCR will work closely with organizations to develop necessary remedial actions, such as training of staff in the requirements of Title VI and MEPA, to ensure that their efforts at compliance are successful.

When a state fails to develop an adequate recruitment plan and expedite the placement of children consistent with MEPA, the Secretary through ACF and OCR will provide technical assistance to the state in the development of the plan and where necessary resolve through corrective action major compliance issues. When these efforts fail the Secretary will make a determination of appropriate proportional penalties.

[FR Doc. 95–10155 Filed 4–24–95; 8:45 am]

BILLING CODE 4150–04–M

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Tuesday, May 16, from 12:30 p.m. to 5:30 p.m., and on Wednesday, May 17, from 8:30 a.m. to 10:15 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on May 17, 1995, from 10:15 a.m. to 12:00 p.m. to discuss the relative emphasis and focus of topics in the AHCPR grant portfolio. The discussion could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594–1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6666 no later than May 5, 1995.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and

in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Robert A. Berenson, M.D.; F. Marion Bishop, Ph.D.; Linda Burnes Bolton, Dr. P.H.; John W. Danaher, M.D.; Helen Darling, M.A.; Nancy J. Kaufman, M.S.; William S. Kiser, M.D.; Robert M. Krughoff; Risa J. Lavizzo-Mourey, M.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Barbara J. McNeil, M.D.; Walter J. McNerney, M.H.A.; Edward B. Perrin, Ph.D.; Louis F. Rossiter, Ph.D.; Albert L. Siu, M.D.; and Ellen B. White, M.B.A.

There also are Federal ex officio members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Tuesday, May 16, 1995, the open portion of the meeting will begin at 12:30 p.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency issues and program initiatives. The meeting will adjourn at 5:30 p.m.

On Wednesday, May 17, 1995, the open portion of the Council meeting will resume at 8:30 a.m. with a discussion of the AHCPR grant application review process. The open meeting will adjourn at 10:15 a.m. The Council will begin the closed portion of the meeting to discuss the AHCPR grant portfolio from 10:15 a.m. to 12:00 p.m. The meeting will then adjourn at 12:00 p.m.

Agenda items are subject to change as priorities dictate.

Dated: April 19, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–10121 Filed 4–24–95; 8:45 am]

BILLING CODE 4160–90–M

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Monoclonal Antibodies for the Therapy and/or Diagnosis of Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Advertisement.

SUMMARY: The Laboratory of Tumor Immunology and Biology (LTIB), National Cancer Institute is seeking pharmaceutical or biotechnology collaborator(s) which can effectively pursue the scientific and commercial development of a panel of monoclonal antibodies generated against tumor associated antigens for use in the therapy and/or diagnosis of a range of human cancers. The primary focus of these collaborations will be the development and commercialization of a panel of monoclonal antibodies consisting of two major groups: (A) Monoclonal antibodies directed against the pancarcinoma antigen, TAG–72. TAG–72 is expressed on a range of human carcinomas including colorectal, gastric, pancreatic, ovarian, endometrial, breast, non-small cell lung, and prostate. Monoclonal antibody CC49 is the prototype monoclonal antibody of this group. Humanized and other genetically engineered variants of monoclonal antibody CC49 have already been developed. (B) Monoclonal antibodies directed against human carcinoembryonic antigen, which is expressed on the following carcinomas: colorectal, pancreatic, gastric, non-small cell lung, and breast carcinoma. The prototype for this group of monoclonal antibodies is COL–1. (C) Additionally, it may likely be a further goal of these collaborations to develop novel recombinant forms of these monoclonal antibodies.

It is anticipated that because of the magnitude, diversity, and expense of these proposed research projects the collaboration(s) may take the form of multiple CRADAs. The collaboration(s) will involve all aspects of diagnostic and/or therapeutic development from basic scientific inquiry to late stage clinical trials which selected sponsor(s) will be required to partially support. The selected sponsor(s) will collaborate in the development of one or more of the following diagnostic or therapeutic forms of these monoclonal antibodies: (1) Radiolabeled monoclonal antibodies (diagnostic (oncologic imaging) and/or therapeutics); (2) Drug and/or toxin conjugated monoclonal antibodies; (3) Pro-drug conjugated monoclonal antibodies; (4) Unconjugated monoclonal antibodies (including bifunctional forms).

Sponsors will be selected based upon their ability to collaborate with NCI for the development of any of these therapeutic or diagnostic forms in accordance with the corporate role and selection criteria outlined below. It is emphasized that selection of a collaborator will not be dependent upon an entity's ability to perform the largest portion of the research project. Rather, a collaborator will be selected based upon the scientific merit and intellectual contributions brought to each individual project(s). Potential collaborators are, therefore, urged to submit proposals which focus on particular area(s) of expertise in a well-organized and precise manner which clearly outlines a development and commercialization plan. Finally, it is also possible that logical extensions of these research protocols may be considered as potential collaborative projects. Accordingly, proposals must address the requested criteria and protocols, but in addition, may include any additional unique development projects relating to the core technology.

The term of the CRADA(s) is anticipated to be three (3) to five (5) years.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to either Michael Christini or Mark Noel (Tel #301–496–0477, Fax #301–402–2117), Office of Technology Development, National Cancer Institute, Building 31, Room 4A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

DATES: Proposals must be received at the above address by 5 p.m. June 26, 1995.

SUPPLEMENTARY INFORMATION: Cooperative Research and Development Agreement or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below. Under the present proposal, the Government is seeking collaborator(s), which in accordance with the requirements of the regulations governing the transfer of technology in which the Government has taken an active role in developing (37 CFR 404.8), can further develop this technology to a commercially available status to best meet the needs of the public.

This technology has been the focal point of much research and

development within the LTIB for many years. During that time, there has been continual advances in the field of antibody development within LTIB via extensive intramural research, corporate sponsored CRADA projects, and independent corporate development under licensing arrangements.

When the excellent tumor targeting characteristics of anti-TAG–72 monoclonal antibody B72.3 in the clinic were observed, the LTIB developed a series of second generation, higher affinity monoclonal antibodies for TAG–72. This ''CC'' series, of which monoclonal antibody CC49 is the prototype, has been extensively characterized both preclinically and clinically. Radiolabeled CC49 shows much better tumor targeting in the clinic than B72.3. CC49 reacts with the majority of the following carcinomas: Colorectal, gastric, pancreatic, non-small cell lung, ovarian, endometrial, breast and prostate.

The LTIB has also developed a series of anti-carcinoembryonic antigen monoclonal antibodies (COL series). The prototype (COL–1) reacts to the vast majority of gastrointestinal and pancreatic cancers, and also to 50% of breast cancers and 70% of non-small cell lung cancers. A Phase 1 trial has just been completed with radiolabeled COL–1.

The LTIB has shown successful tumor targeting in cancer patients with radiolabeled forms of both monoclonal antibodies which are the primary focus of these collaborations: CC49 and COL–1. Phase I therapy trials for both monoclonal antibodies have been completed. Additionally, radiolabeled forms of CC49 are currently in Phase II clinical trials for colorectal, breast, ovarian, and prostatic cancer as a murine monoclonal antibody.

As a corollary, the progression of the technology can be illustrated in two specific examples of ongoing research collaborations which will not be a part of the present CRADA:

(A) The LTIB, NCI initially developed a monoclonal antibody designated B72.3, which reacts to the pancacinoma antigen termed TAG–72. This breakthrough technology provided the basis for the first and still only monoclonal antibody approved by the FDA for any *in vivo* use in cancer. Under a separate licensing agreement, Cytogen Corporation conjugated B72.3 with ^{111}In and developed Onco Scint CR/OV® for oncologic imaging to be used in conjunction with CT scan. OncoScint CR/OV® has been approved for use in both colorectal cancer and ovarian cancer.

(B) Under a separate CRADA agreement, a Phase III multicenter trial is also in progress employing ^{125}I-labeled murine CC49 with an intraoperative hand held probe as a method of radioimmunoguided surgery.

Additional Background Information

- The LTIB has shown via immunohistochemistry that anti-TAG–72 and anti-carcinoembryonic antigen monoclonal antibodies complement each other extremely well in overcoming antigen heterogeneity. Serum assays for carcinoembryonic antigen and TAG–72 (CA72–4) are also complementary in that non-coordinate expression is observed.
- Previous collaborative studies on the use of the CC49 and COL–1 monoclonal antibodies as drug conjugates demonstrated anti-tumor effects in animal models.
- The LTIB has recently developed CDR grafted (humanized) forms of monoclonal antibody CC49, and other novel genetically engineered immunoglobulin forms for CC49 could be the subject of any CRADA. Similar constructs of anti-carcinoembryonic antigen monoclonal antibodies could also be the subject of any CRADA.
- Recent clinical trials have supported the preclinical observations that recombinant interferon will selectively upregulate both TAG–72 and carcinoembryonic antigen expression on the surface of tumor cells. This finding should enhance both diagnostic and therapeutic uses of these classes of monoclonal antibodies, and these studies could be included as CRADA activities.
- The NIH has exclusively licensed the rights for monoclonal antibody CC49 for use with the radioimmunoguided surgery intraoperative probe as part of a separate collaboration.
- A comprehensive list of publications relating to this technology, intellectual property and background licensing information, and general CRADA information will be provided upon initial contact with NCI.

Party Contributions

The role of the National Cancer Institute includes the following:

(1) Develop novel recombinant forms of monoclonal antibodies.

(2) Initial characterization of hybridoma cell lines producing monoclonal antibodies.

(3) Conduct preclinical testing (tumor targeting and therapy) of these monoclonal antibodies both *in vivo* and *in vitro* as unlabeled immunoglobulin forms and/or as antibody conjugates.

(4) Conduct preclinical studies on the use of biologic response modifiers to upregulate tumor targeting and therapy.

(5) Analyze pharmacokinetics and anti-immunoglobulin responses in some clinical trials.

The role of the successful corporate sponsor(s) will include:

(1) Develop high producer clones of the monoclonal antibodies and recombinant immunoglobulin producing cells lines and cultures supplied by the NCI and optimize production and purification procedures for experimental tumor targeting and therapy studies.

(2) Produce and purify clinical grade (GMP) monoclonal antibodies for clinical trials and submit Drug Master Files in support of the monoclonal antibody production.

(3) Conduct toxicity studies as required by the FDA.

(4) Develop methodologies for the conjugation of monoclonal antibodies with (A) Radionuclides, (B) Drugs and/or toxins, (C) Pro-drugs, (D) Bifunctional antibodies.

(5) Submit IND application in support of clinical trials.

(6) Conduct clinical trials using monoclonal antibody and immunoglobulin forms.

The role of both the National Cancer Institute and the successful corporate sponsor(s) will include:

(1) Optimize purification schemes for immunoglobulin forms, prior to and post conjugation.

(2) Collaborate on clinical trial design including protocols using biologic response modifiers (e.g., recombinant interferon).

(3) Collaborate on data analysis in support of clinical trials.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

(1) Experience in the GMP production, purification, quality control of monoclonal antibodies and regulatory requirements of monoclonal antibody clinical trials.

(2) Experience in the conjugation of monoclonal antibodies with one or more of the following: (A) Radionuclides, (B) Drugs and/or toxins, (C) Pro-drugs, (D) Bifunctional Antibodies *and* the analyses of these reagents.

(3) Ability to provide necessary reagents on a timely basis.

(4) Experience in conducting clinical trials.

(5) Willingness to cooperate with the National Cancer Institute in the collection and evaluation of data.

(6) Agreement to be bound by the DHHS rules involving the use of human and animal subject, and human tissue.

(7) Ability to obtain background license to relevant patent rights.

(8) Willingness to agree to Federal Statutory provisions for the equitable distribution of patent rights to any CRADA subject-matter inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (A) an irrevocable, non-exclusive, royalty-free research license to the Government (when a company employee is the sole inventor) or (B) an option for an exclusive or non-exclusive license to the company on terms that are appropriate (when the Government employee is the sole or joint inventor).

(9) Willingness to cost share in laboratory studies including the funding of personnel dedicated to completion of the CRADA research project.

(10) Submission of an initial response to the NIH Model CRADA boilerplate provisions.

Dated: April 13, 1995.

Dr. Thomas Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 95–10110 Filed 4–24–95; 8:45 am]

BILLING CODE 4140–010–P

National Cancer Institute: Opportunity for a Clinical Trial Cooperative Research and Development Agreement (Clinical Trial ''CRADA'') for the Scientific and Commercial Development of the Signal Transduction Inhibitor, ''CAI'', as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of the signal transduction inhibitor, carboxyamide-amino triazole (''CAI'', NSC 609974), for the treatment and/or prevention of cancer. The National Cancer Institute has data suggesting that CAI may have potential for the treatment and prevention of cancer. The selected sponsor will be awarded a CRADA for the co-development of this agent with the National Cancer Institute.

ADDRESSES: Questions about this opportunity may be addressed to Mark W. Noel, Office of Technology Development, NCI, Building 31/Room 4A51, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–0477, facsimile (301) 402–2117, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATES: In view of the important priority of developing new agents for the treatment or prevention of cancer, interested parties should notify this office in writing no later than June 25, 1995. Respondents will then be provided an additional 60 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: ''Cooperative Research and Development Agreement'' or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below. The present opportunity will be for a Clinical Trial CRADA. The Clinical Trial CRADA is a modification of the standard NIH Model Agreement wherein additional language has been drafted to enable the Collaborator to access and utilitize clinical trial data.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop CAI through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government.

CAI is a novel chemically defined compound which has shown promising antitumor activity in several preclinical trials. The drug is under patent to Merck & Co., Inc. (U.S. Patent 4,590,201). The use of CAI in a method of treating peritoneal carcinomatosis of solid tumors is claimed in U.S. Patent 5,132,315 assigned to the Dept. of Health and Human Services. A method for the detection and quantitation of CAI levels in blood is claimed in U.S. Patent 5,405,782 which is also assigned to the Dept. of Health and Human Services. Its use in the treatment of cancer in patients with a surgically excised tumor with a high probability of metastasis and its use in treatment of cancers involving the transportation of individual cells to other tissue from a metastasizing tumor are claimed in U.S. Patent 5,045,543 (assigned to Merck & Co. Inc). The Clinical Trial CRADA will allow a pharmaceutical company to provide resources, in collaboration with the NCI, for the continuing preclinical and clinical development work for this agent and its eventual commercialization. Merck & Co.'s patent rights will be available for licensing on terms to be mutually agreed upon by Merck and the selected Collaborator. Similarly, the Government will make its relevant intellectual property rights available for licensing to the Collaborator.

Based on the promising data obtained from the ongoing Phase I clinical trials, there is a need to obtain greater quantities of CAI and to continue clinical development of this agent. The NCI is interested in establishing a Clinical Trial CRADA with a pharmaceutical company to assist in the continuing development of CAI. The government will provide all relevant available expertise and information to date and will jointly pursue new trials as required giving the pharmaceutical company exclusive rights to all preclinical and clinical data for regulatory approval and its New Drug Application (NDA). The successful pharmaceutical company will provide the necessary quantities of drug plus the necessary financial and organizational support to complete further development of CAI to establish clinical efficacy and possible commercial status.

The expected duration of the CRADA will be three (3) to five (5) years.

The role of the National Cancer Institute, includes the following:

1. The government has data for the bulk production of clinical grade CAI. The successful pharmaceutical company will be allowed access to this data.

2. The government will provide data concerning pharmaceutical manufacturing and controls, including dosage form development data for the finished product.

3. The government will allow the pharmaceutical company to review and cross-file the NCI's IND.

4. The government will make the NCI's IND proprietary under such circumstances and make the IND available (exclusively) to the pharmaceutical company.

5. The government will continue the clinical development of this compound under its clinical trials network in coordination with the pharmaceutical company.

6. Relevant Government intellectual property rights are available for licensing through the Office of Technology Transfer, National Institutes of Health. For further information contact Jack Spiegel, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892; (301) 496–7735; facsimile (301) 402–0220.

The role of Merck & Co. under the CRADA will include the following:

1. Participate in the selection of the CRADA collaborator and in the development of the CRADA Research Plan.

2. Provide for the licensing of Merck intellectual property rights to the selected Collaborator as necessary for the clinical development and commercialization of CAI as an anti-cancer agent.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Provide plans to independently secure future continuing supplies of GMP produced and formulated material to assure continued collaborative clinical development of CAI.

2. Provide funds to supplement the clinical trials support contracts and offer any other necessary support to the NCI for continued collaborative clinical development of this compound. This includes both financial support as well as personnel for data management and clinical care.

3. Provide planning and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include its demonstrated experience and commitment to the following:

1. Experience in preclinical and clinical drug development.

2. Experience and ability to produce, package, market and distribute pharmaceutical products.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the NCI in the collection, evaluation, publication and maintaining of data from clinical trials of investigational agents.

5. The provision of adequate quantities of GMP produced and formulated CAI as needed for clinical development of this agent for the specified field of use to be determined upon mutual agreement of the parties.

6. Provide defined financial and personnel support for the clinical trials to be mutually agreed upon.

7. An agreement to be bound by the DHHS rules involving human and animal subjects.

8. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

9. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee(s) is (are) the sole inventor(s)) or (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee(s) is (are) the sole inventor(s) or where a joint invention arises).

Dated: April 13, 1995.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 95–10109 Filed 4–24–95; 8:45 am]

BILLING CODE 4140–01–P

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (''CRADA'') for the Scientific and Commercial Development of Certain Signal Transduction Inhibitors as Anticancer Agents

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the preclinical development and possible eventual clinical development of a family of agents which inhibit the signal transduction pathways required for the growth and metastasis of cancer cells. The National Cancer Institute has preclinical data suggesting that these agents may have potential for the treatment and/or prevention of cancer. The selected sponsor will be awarded a CRADA for the co-development of these agents in a specified field of use to be determined upon mutual agreement of the parties.

ADDRESSES: Questions about this opportunity may be addressed to Mark W. Noel, Office of Technology Development, NCI, Building 31/Room 4A51, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–0477, facsimile (301) 402–2117, from whom further information including a summary copy of the preclinical data may be obtained.

DATES: In view of the important priority of developing new drugs for the treatment or prevention of cancer, interested parties should notify this office in writing no later than June 26, 1995. Respondents will then be provided an additional 60 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: ''Cooperative Research and Development Agreement'' or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop the subject agents to a marketable status to meet the needs of the public and with the best terms for the Government. These agents are a novel, chemically-defined family of agents being investigated in the Laboratory of Pathology of the Division of Cancer Biology, Diagnosis and Centers, National Cancer Institute. These agents have been demonstrated to inhibit the signal transduction pathways required for the growth and metastasis of cancer cells and have shown promising antitumor activity in preclinical investigations. The majority of the agents which are the subject of the CRADA opportunity are the subject of patent U.S. Patent 5,359,078 which is assigned to the Dept. of Health and Human Services. A method for the detection and quantitation of the levels of these agents in blood is claimed in U.S. Patent 5,405,782 which is also assigned to the Dept. of Health and Human Services. The Cooperative Research and Development Agreement (''CRADA'') will allow a pharmaceutical company to provide resources, in collaboration with the NCI, for the continuing preclinical development and possibly the clinical development for this group of agents.

The government will provide all relevant available expertise and information to date and will, jointly pursue further preclinical development of these agents with the chosen Collaborator. Relevant background patent rights are available for licensing to the Collaborator.

The successful pharmaceutical company will provide the necessary quantities of the agents plus the necessary technical expertise, financial and organizational support to complete further development of these agents to establish their efficacy and possible commercial status.

The expected duration of the CRADA will be three (3) to five (5) years.

The role of the National Cancer Institute, includes the following:

1. The government will continue preclinical development of the agents as

signal transduction inhibitors *in vitro* and *in vivo*. Data from these studies will be provided to the Collaborator and evaluated jointly.

2. The government will provide data for the production of the subject agents. The successful pharmaceutical company will be allowed exclusive access to this resource.

3. As appropriate, agents showing promise in preclinical studies may proceed to collaborative clinical development under NCI's clinical trials network, as mutually agreed upon by both parties and subject to appropriate amendment of this CRADA or alternatively by negotiation and execution of a Clinical Trials CRADA. The Clinical Trial CRADA is a modification of the standard NIH Model Agreement wherein additional language has been drafted to enable the Collaborator to access and utilize clinical trial data.

4. Relevant Government patent rights are available for licensing through the Office of Technology Transfer, National Institutes of Health. For further information contact Jack Spiegel, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892; (301) 496–7735; Facsimile (301) 402–0220.

The role of the successful pharmaceutical company under the CRADA will include the following:

1. Provide plans to independently secure future continuing supplies of the selected agents for their continued preclinical development. The collaborator will also supply sufficient quantities of GMP produced and formulated material for the selected agents which, upon mutual consent of the parties, proceed to collaborative clinical development.

2. Provide scientific development strategy and financial and other support for the collaborative preclinical development of the selected agents.

Criteria for choosing the pharmaceutical company include its demonstrated experience and commitment to the following:

1. Experience in preclinical and clinical drug development.

2. Experience and ability to produce, package, market and distribute pharmaceutical products.

3. Experience in the monitoring, evaluation and interpretation of the data from preclinical studies and investigational agent clinical studies under an Investigational New Drug Application (IND).

4. A willingness to cooperate with the NCI in the collection, evaluation, publication and maintaining of data from preclinical investigations and clinical trials, as appropriate, of investigational agent(s).

5. The ability to provide adequate quantities of the subject agents for their continued preclinical investigation and ability, as appropriate to provide adequate quantities of GMP produced and formulated material as needed for clinical development of one or more of these agents, as mutually agreed by the parties.

6. Provide defined financial and personnel support for the preclinical studies and clinical trials (as appropriate) to be mutually agreed upon.

7. An agreement to be bound by the DHHS rules involving human and animal subjects.

8. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

9. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee(s) is (are) the sole inventor(s)) or (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee(s) is (are) the sole inventor(s) or where a joint invention arises).

Dated: April 13, 1995.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 95–10108 Filed 4–24–95; 8:45 am]

BILLING CODE 4140–01–P

Division of Research Grants; Amended Notice of Meeting

Notice is hereby given of a change in the meeting May 8–9, 1995, starting at 8:30 a.m., Building 31C, Conference Room 6, of the Division of Research Grants Advisory Committee, which was published in the **Federal Register** on April 3 (60 FR 16880).

This committee was to have convened at 8:30 a.m. on May 8 to adjournment on May 9, but has been changed to May 10–11, 1995, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. on May 10 to adjournment on May 11.

Dated: April 18, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10107 Filed 4–24–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

On February 9, 1995, a notice was published in the **Federal Register** (60 FR 7785) that an application had been filed with the U.S. Fish and Wildlife Service (Service) by Heritage Arts Foundation, Inc., St. George, Utah, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), threatened desert tortoises (*Gopherus agassizii*) in conjunction with operation of an access road to the Tuacahn School and Performing Arts Center in Padre Canyon, town of Ivins, Washington County, Utah, pursuant to an implementation agreement which implements the Heritage Arts Foundation's Habitat Conservation Plan. Thirty-seven comments were received. Thirty-six commenters expressed support for issuance of the incidental take permit, and one commenter opposed issuance of any incidental take permits in this area and questioned the evaluation of alternatives to, and impacts of, the proposal. These comments have been addressed and are incorporated into the final environmental assessment.

Notice is hereby given that on March 31, 1995, as authorized by the provisions of the Act, the Service issued an incidental take permit (PRT–798634) to the above-named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act, as amended.

Additional information on this permit action may be obtained by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84114, telephone (801) 524–5001, between the hours of 7:30 a.m. to 4:30 p.m. weekdays.

Dated: April 19, 1995.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 95–10135 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–55–M

Finding of No Significant Impact for Incidental Take Permits for the Construction of Single Family Residences at the Specific Site Locations Below in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of Section 10(a)(1)(B) permits for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of single-family residences in Travis County, Texas.

Proposed Action

The proposed action is the issuance of permits under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant (Howard L. Burris Jr.) plans to construct single-family residences at the specific sites indicated in Block D, Section 4, Jester Point 2: Lot 35 aka 7116 Foxtree Cove (PRT–798292), Lot 19 aka 7115 Foxtree Cove (PRT–798296), Lot 20 aka 7113 Foxtree Cove (PRT–798290), Lot 23 aka 7107 Foxtree Cove (PRT–798289), Lot 22, aka 7109 Foxtree Cove (PRT–798288), Lot 21 aka 7111 Foxtree Cove (PRT–798286), Lot 28 aka 7102 Foxtree Cove (PRT–798302), Lot 27 aka 7100 Foxtree Cove (PRT–798295), Lot 25 aka 7103 Foxtree Cove (PRT–798297), Lot 36 aka 7200 Foxtree Cove (PRT–798301), Lot 323 aka 7112 Foxtree Cove (PRT–798293), Lot 15 aka 7205 Foxtree Cove (PRT–798294), Lot 34 aka 7114 Foxtree Cove (PRT–798299), Lot 18 aka 7117 Foxtree Cove (PRT–798291), Lot 17 aka 7201 Foxtree Cove (PRT–798300), and Lot 24 aka 7105 Foxtree Cove (PRT–798298).

The proposed construction and operation of single-family residences will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the individual Environmental Assessment/Habitat Conservation Plans. These conservation plan actions ensure that the criteria established for issuance of an incidental take permits will be fully satisfied.

Alternatives Considered

1. Proposed action,
2. Alternate site locations,
3. Alternate site designs,
4. Wait for issuance of a regional Section 10(a)(1)(B) permit
5. No action.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plans, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of Environmental Impact Statements on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permits for the construction and operation of the single-family residences at the sites specified above in Travis County, Texas.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–10133 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 15, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by May 10, 1995.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Los Angeles Nurses' Club, 245 S. Lucas Ave., Los Angeles, 95000581

CONNECTICUT

Fairfield County

West End Congregation—Achavath Achim Synagogue (Historic Synagogues of Connecticut MPS), 725 Hancock Ave., Bridgeport, 95000574

Hartford County

Beth Hamedrash Hagodol Synagogue (Historic Synagogues of Connecticut MPS), 370 Garden St., Hartford, 95000577

Chevry Lomday Mishnayes Synagogue (Historic Synagogues of Connecticut MPS), 148–150 Bedford St., Hartford, 95000575

Tephereth Israel Synagogue (Historic Synagogues of Connecticut MPS), 76 Winter St., New Britain, 95000576

New Haven County

Beth Israel Synagogue (Historic Synagogues of Connecticut MPS), 232 Orchard St., New Haven, 95000578

KANSAS

Chase County

Whitney Ranch Historic District, SE of Hymer off unnamed rd., Hymer vicinity, 95000589

Marion County

Island Field Ranch House, US 56/77 S of Lincolnville, Lincolnville vicinity, 95000579

Santa Fe Trail—Marion County Trail Segments (Santa Fe Trail MPS), 3½ mi. S of FAS Hwy. 426 on FAS Hwy. 184, Durham vicinity, 95000584

Morris County

Six Mile Creek Stage Station Historic District (Santa Fe Trail MPS), 600 ft. E of FAS Hwy. 468, 4¼ mi. S of jct. with US 56, Burdick vicinity, 95000585

Osage County

Hunt, Samuel, Grove (Santa Fe Trail MPS), KS 31 E of crossing of I–335 (Kansas Tpk.), Burlingame Township, Burlingame vicinity, 95000586

Rice County

Santa Fe Trail—Rice County Trail Segments (Santa Fe Trail MPS), Bushton Blacktop (FAS Hwy. 570), ¾ mi. N of US 56, Chase vicinity, 95000582

Station Little Arkansas (Santa Fe Trail MPS), 5 mi. S of US 56 on FAS Hwy. 443, ¾ mi. W on gravel rd., Windom vicinity, 95000583

MISSOURI

Buchanan County

Nelson—Pettis Farmsteads Historic District, 4401 Ajax Rd., 3412 Pettis Rd., St. Joseph, 95000587

OHIO

Franklin County

Engine House No. 16, 260 N. Fourth St., Columbus, 95000580

Summit County

Jyrovat Farmstead (Agricultural Resources of the Cuyahoga Valley MPS), 696 Streetsboro Rd., Peninsula vicinity, 95000588

[FR Doc. 95–10106 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Advisory Policy Board

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on June 7–8, 1995, from 9 a.m. until 5 p.m., at the Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, California, telephone 415–362–5500, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting (UCR) and National Incident Based Reporting System (NIBRS) programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, status of the Brady Handgun Violence Prevention Act, and other topics related to the management of the FBI's criminal history information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the FBI CJIS Division programs or related matters with the Board, before or after. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requester's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquiries may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone 202–324–5084, facsimile 202–324–8906.

Dated: April 17, 1995.

Demery R. Bishop,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 95–10082 Filed 4–24–95; 8:45 am]

BILLING CODE 4410–-2–M

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Information Collection Requirement

April 20, 1995.

AGENCY: Office of the Secretary, Labor.

SUMMARY: The Director, Office of Information Resources Management Policy, invites comments on the following proposed expedited review information collection request as required by the Paperwork Reduction Act of 1980, as amended.

DATES: This expedited review is being requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 5, 1995.

ADDRESSES: Written comments should be addressed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, 725 17th St., NW., Room 10235, New Executive Office Building, Wash., DC 20503. Requests for copies of the proposed information collection request should be addressed to Kenneth A. Mills, Department of Labor, 200 Constitution Ave., NW., Room N–1301, Wash, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Mills, (202) 219–5095. Individuals who use a telecommunications device for the deaf (TTY/TDY) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested persons an early opportunity to comment on an information collection request. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with the agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management Policy, publishes this notice simultaneously with the submission of this request to OMB. This notice contains the following information:

Type of Review: *Expedited.*

Agency: Women's Bureau.

Title: The Working Women Count Honor Roll—Recognizing Employers and Others Who Value Making Work Better for Women.

Frequency of Response: One-time.

Affected Public: Business or other for-profit; Not-for-profit; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 2,500.

Estimated Time Per Response: 30 minutes.

Total Annual Burden Hours: 1,250.

Respondents Obligation to Reply: Voluntary.

Description: The Women's Bureau is establishing a ''Working Women Count Honor Roll'' to stimulate local action and recognize employers in both the private and public sector, unions and other local, State and national organizations who through their own policies and practices are valuing the work the women do. The Women's Bureau staff and Working Women Count partners will distribute pledge cards to interested businesses, labor unions, government officials, media and community organizations to stimulate interest at the local level. Those interested in making a pledge will voluntarily return the pledge cards to the National Office. Once received, the pledge cards will be placed on the Working Women Count pledges mailing list for additional information.

Respondents will receive an information kit to further describe the concerns of customers and tell pledges how they may qualify for membership on the Working Women Count Honor Roll. The Women's Bureau will use a self-nomination approach to membership on the Working Women Count Honor Roll. Interested parties will make a pledge, track their progress and upon completion of their tasks provide the requested information according to the information kit.

The Women's Bureau will review nomination forms for completeness and admit completed projects to the Working Women Count Honor Roll. Those admitted will receive a letter from the Women's Bureau Director and a certificate of appreciation from the Secretary of Labor for accomplishing their Working Women Count pledge.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–10242 Filed 4–24–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: The Job Training Partnership Act (JTPA) provides that the term ''economically disadvantaged'' may be defined as 70 percent of the ''lower living standard income level'' (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL. The Internal Revenue Code also provides that the term ''economically disadvantaged'' may be defined as 70 percent of the LLSIL for purposes of the Targeted Jobs Tax Credit (TJTC).

EFFECTIVE DATE: This notice is effective on April 25, 1995.

ADDRESSES: Send written comments to: Ms. Diane Mayronne, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, Room N–4463, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Mayronne, Telephone: 202–219–5305 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) ''to afford job training to those economically disadvantaged individuals * * * who are in special need of such training to obtain productive employment.'' JTPA Section 2; see 20 CFR 626.1 and 626.3(b). JTPA Section 4(8) defines, for the purposes of JTPA eligibility, the term ''economically disadvantaged'' in part by reference to the ''lower living standard income level'' (LLSIL). See 20 CFR 626.5.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA Section 4(16) defines the LLSIL as follows:

> The term ''lower living standard income level'' means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent ''lower living family budget'' issued by the Secretary.

Internal Revenue Code (I.R.C.) Section 51 established the Targeted Jobs Tax Credit (TJTC) for a portion of the wages paid by employers to employees from ''targeted'' groups who begin work for the employer before January 1, 1995. 26 U.S.C. 51(c)(4). Certain of the targeted groups require that the worker be a member of ''an economically disadvantaged family.'' See, *e.g.*, 26 U.S.C. 51(d)(3)(A)(ii), (4)(C), (7)(B), (8)(A)(iv), and (12)(A)(iv). Pursuant to 26 U.S.C. 51(d)(11), the LLSIL is used to determine whether an individual is a member of an economically disadvantaged family for applicable TJTC purposes. Since the determination of whether an individual is a member of an economically disadvantaged family necessarily will relate to a period prior to 1995, the LLSIL figures in this notice will not be utilized by the TJTC program under current law.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the TJTC. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provide the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA) published the 1994 updates to the LLSIL in the **Federal Register** of April 22, 1994. 59 FR 19241. ETA has again updated the LLSIL to reflect cost of living increases for 1994 by applying the percentage change in the December 1994 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1993 CPI–U, to each of the April 22, 1994, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to Section 4(8) of JTPA, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

North Central

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Mississippi
Micronesia
North Carolina
Tennessee
Texas
Virginia
West Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the 1995 figures were updated by creating a ''State Index'' based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, bimonthly or semiannual CPI–U changes for a 12-month period ending in

December 1994. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the next highest ten, are set forth in Table 3 below.

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1995 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses.

Section 4(8) of JTPA defines ''economically disadvantaged'' as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 60 FR 7772 (February 9, 1995).

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies, and employers in their States to use in determining eligibility for JTPA. The Governor should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Table 4 may be used with any of the levels designated.

Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulations at 20 CFR 627.200, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U.

Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA program.

Signed at Washington, DC, this 18th day of April, 1995.

Donald J. Kulick,

Deputy Administrator.

BILLING CODE 4510–30–M

Appendix

Table 1 -- Lower Living Standard Income Level By Region[1]

Region	1995 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro	26,130	18,340
Non-Metro	26,210	18,350
North Central		
Metro	24,230	16,960
Non-Metro	22,910	16,040
South		
Metro	23,050	16,130
Non-Metro	21,630	15,140
West		
Metro	25,800	18,060
Non-Metro	25,150	17,600

[1] For ease of calculation, these figures have been rounded to the next highest ten dollars.

Table 2 -- Lower Living Standard Income Level -- Alaska, Hawaii and Guam[1]

Region	1995 Adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro	33,080	23,160
Non-Metro	32,190	22,530
Hawaii-Guam:		
Metro	36,130	25,290
Non-Metro	35,160	24,610

[1] Rounded to the next highest ten dollars.

Table 3 -- Lower Living Standard Income Level -- 25 MSAs[1]

Region MSA	1995 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	33,080	23,160
Atlanta, GA	22,870	16,010
Baltimore, MD	24,560	17,190
Boston-Lawrence-Salem, MA/NH	27,500	19,250
Buffalo-Niagara Falls, NY	23,580	16,510
Chicago-Gary-Lake County, IL/IN/WI	25,300	17,710
Cincinnati-Hamilton, OH/KY/IN	24,560	17,190
Cleveland-Akron-Lorain, OH	25,100	17,570
Dallas-Ft Worth, TX	21,970	15,380
Denver-Boulder, CO	24,540	17,180
Detroit-Ann Arbor, MI	23,350	16,350
Honolulu, HI	36,130	25,290
Houston-Galveston-Brazoria, TX	21,950	15,370
Kansas City, MO/KS	23,150	16,200
Los Angeles-Anaheim-Riverside, CA	26,820	18,770
Milwaukee, WI	24,690	17,280
Minneapolis-St Paul, MN/WI	23,710	16,600
New York-Northern N.J.-Long Island, NY/NJ/CT	27,290	19,100
Philadelphia-Wilmington-Trenton, PA/NJ/DE/MD	25,700	17,990
Pittsburgh-Beaver Valley, PA	24,450	17,120
St Louis-East St Louis, MO/IL	23,490	16,440
San Diego, CA	26,920	18,840
San Francisco-Oakland-San Jose, CA	26,570	18,600
Seattle-Tacoma, WA	27,380	19,170
Washington, DC/MD/VA	28,010	19,610

[1] Rounded to the next highest ten dollars.

Table 4--SEVENTY PERCENT OF UPDATED 1995 LLSIL, BY FAMILY SIZE[1]

Family of One	Two	Three	Four	Five	Six
5,450	8,930	12,260	15,140	17,870	20,890
5,530	9,070	12,450	15,370	18,140	21,210
5,540	9,070	12,460	15,380	18,150	21,220
5,760	9,450	12,970	16,010	18,890	22,090
5,770	9,460	12,990	16,040	18,930	22,140
5,810	9,520	13,070	16,130	19,030	22,260
5,830	9,560	13,120	16,200	19,120	22,360
5,890	9,650	13,240	16,350	19,290	22,560
5,920	9,700	13,320	16,440	19,400	22,690
5,940	9,740	13,370	16,510	19,480	22,780
5,980	9,800	13,450	16,600	19,590	22,910
6,110	10,010	13,740	16,960	20,010	23,410
6,160	10,100	13,870	17,120	20,200	23,630
6,190	10,140	13,920	17,180	20,270	23,710
6,190	10,140	13,920	17,190	20,280	23,720
6,220	10,200	14,000	17,280	20,390	23,850
6,330	10,370	14,230	17,570	20,730	24,250
6,340	10,380	14,260	17,600	20,770	24,290
6,380	10,450	14,350	17,710	20,900	24,440
6,480	10,610	14,570	17,990	21,230	24,830
6,500	10,660	14,630	18,060	21,310	24,920
6,600	10,820	14,860	18,340	21,640	25,310
6,610	10,830	14,860	18,350	21,650	25,320
6,700	10,970	15,070	18,600	21,950	25,670
6,760	11,070	15,200	18,770	22,150	25,900
6,780	11,120	15,260	18,840	22,230	26,000
6,880	11,270	15,470	19,100	22,540	26,360
6,900	11,310	15,530	19,170	22,620	26,460
6,930	11,360	15,590	19,250	22,720	26,570
7,060	11,570	15,880	19,610	23,140	27,060
8,110	13,290	18,250	22,530	26,590	31,090
8,340	13,660	18,760	23,160	27,330	31,960
8,860	14,520	19,930	24,610	29,040	33,960
9,100	14,920	20,490	25,290	29,840	34,900

1 Figures provided in Tables 1–3 of this notice are for a family of four persons.
To use Table 4, the appropriate figure should be found in the Family of Four column.
Then one may read across the row for family sizes other than four in the appropriate column.

[FR Doc. 95–10152 Filed 4–24–95; 8:45 am]
BILLING CODE 4510–30–C

Occupational Safety and Health Administration

Vermont State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On October 16,1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of Subpart U to Part 1952 containing the decision. The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. By letter dated January 23, 1995, from Mary S. Hooper, Commissioner, Vermont Department of Labor and Industry, to Cindy A. Coe, then Acting Regional Administrator, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR Parts 1904 and 1910, and subsequent amendments thereto, as described below:

(1) Revision to 29 CFR 1904.8, Reporting of fatality or multiple hospitalization incidents, as published in the **Federal Register** of April 1, 1994 (59 FR 15600); and

(2) Revisions and corrections to 29 CFR 1910.132, 1910.133, 1910.135, 1910.136, 1910.138, and Appendices A and B, Personal Protective Equipment for General Industry as published in the **Federal Register** of April 6, 1994 (59 FR 16360) and July 1, 1994 (59 FR 33910).

These standards became effective on January 1, 1995, pursuant to Section 224 of State Law.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standards. It has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont, 05602; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N–3700, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective on April 25, 1995.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 21st day of March, 1995.

Cindy A. Coe,

Deputy Regional Administrator.

[FR Doc. 95–10151 Filed 4–24–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CAPITAL PLANNING COMMISSION

District of Columbia Historic Preservation Review Board; Proposed Sports and Entertainment Arena; Public Meeting on Historic Preservation Issues

AGENCY: National Capital Planning Commission.

SUMMARY: In accordance with Section 106 of the National Historic Preservation Act, the National Capital Planning Commission has requested the comments of the State Historic Preservation Officer for the District of Columbia in assessing the potential effects on historic properties of the proposed sports and entertainment arena.

The proposed 20,600 seat arena is scheduled to be completed in time for the 1997/98 basketball and hockey seasons. The proposed site is at Gallery Place, which includes the following: Square 455, which is bounded by G, 6th, F, and 7th Streets, N.W.; the right-of-way of the 600 block of G Street, NW., and approximately the southern fifth of Square 454 which is bounded by H, G, and 7th Streets, NW.

The National Capital Planning Commission announces that as part of the State Historic Preservation Officer's review, the Historic Preservation Review Board is holding a public meeting to review the Section 106 documentation which identifies affected historic properties, assesses the potential impacts, and discusses potential measures to mitigate or avoid the adverse effects, including consideration of alternative sites. The meeting will be held on: Wednesday, May 24, 1995 at 10:00 AM, 441–4th Street, NW. (#1 Judiciary Square), Room 220 South (Zoning Commission Hearing Room).

The documentation to be considered will be available to the Board and to the general public on and after May 10, 1995 and may be reviewed by calling the Historic Preservation Division at 727–7360.

SUPPLEMENTARY INFORMATION: This meeting will also serve as a component of the public participation efforts required to be undertaken by the National Capital Planning Commission by Section 106 under regulations of the Advisory Council on Historic Preservation. (See 36 CFR 800.3, 800.4 and 800.5). Part 800.5 stipulates that interested persons must be given an opportunity to receive information and express their views. Use of existing public agency involvement procedures

is encouraged. Interested persons shall be invited to participate as consulting parties when they so request, including the head of local government, applicants for or holders of grants, permits, or licenses and owners of affected lands, and other interested persons when jointly determined appropriate by the National Capital Planning Commission, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation. To request consulting party status, write: State Historic Preservation Officer, c/o Historic Preservation Division/DCRA, 614 H Street, NW, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Nancy Witherell, National Capital Planning Commission, 801 Pennsylvania Ave., NW., Suite 301, Washington, DC 20576, Phone: (202) 724–0174 or Steve Raiche, DC Department of Consumer & Regulatory Affairs, 614 H Street, NW., Room 305, Washington, DC 20001, Phone: (202) 727–7360.

Sandra H. Shapiro,

General Counsel.

[FR Doc. 95–10167 Filed 4–24–95; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

April 21, 1995.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–0125.

Form Number: None

Type of Review: Reinstatement with change of previously approved collection.

Title: Appraisals.

Description: The Financial Institutions, Recovery, and Enforcement Act of 1989 (FIRREA) directed the National Credit Union Administration to adopt standards for the performance of real estate appraisals in connection with federally related transactions. FIRREA requires that appraisals be in writing and meet certain standards. Credit unions use the information in the loan review process. The information collection in this clearance request is a direct consequence of the legislative intent and statutory requirement.

Respondents: All federally insured credit unions.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours per Response: .25 hours.

Frequency of Response: As required.

Estimated Total Reporting Burden: 137,500 hours.

Clearance Office: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

OMB Reviewer: Milo Sunderhauf (202) 395-5167, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary to the NCUA Board.

[FR Doc. 95–10153 Filed 4–24–95; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) No. 1049]

RIN 1121–ZA12

National Institute of Justice; Solicitation for an Impact Evaluation of Operation Weed and Seed

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the solicitation for an impact evaluation of operation weed and seed.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Laurie Bright, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice is soliciting proposals for an impact evaluation of Operation Weed and Seed. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of the ''Solicitation for an Impact Evaluation of Operation Weed and Seed'' (refer to document No. SL000089). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–10113 Filed 4–24–95; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

Houston Lighting & Power Co., City Public Service Board of San Antonio and Central Power and Light Co.; City of Austin, Texas; Notice of Partial Withdrawal of Application for Amendments to Facility Operating Licences

[Docket Nos. 50–498 and 50–499]

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Houston Lighting & Power Company, et al., (the licensee) to partially withdraw its November 8, 1994, application for proposed amendments to Facility Operating License Nos. NPF–76 and NPF–80 for the South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would have revised the Technical Specifications (TSs) to require only one of the two battery chargers associated with each Class IE 125 VDC Channel I and Channel IV to be operable, in TS 3/4.8.2.1, D.C. Sources, Operating, and in TS 3/4.8.2.2, D.C. Sources, Shutdown.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 7, 1994, (59 FR 63123). However, by letter dated March 14, 1995, the licensee withdrew that portion of the proposed change regarding TS 3/4.8.2.2, because

the required wording was incorporated into this TS by Amendment Nos. 71 and 60, issued by the NRC on February 14, 1995, in response to another amendment request.

For further details with respect to this action, see the application for amendment dated November 8, 1994, and the licensee's letter dated March 14, 1995, which withdrew a portion of the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 17th day of April 1995.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–10125 Filed 4–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–20457]

Environmental Assessment: Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Materials License No. 11–27380–01

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: NRC plans to issue an amendment to License No. 11–27380–01, authorizing Idaho State University to use carbon–14 (C–14) labeled particulate organic material in dispersion studies in two streams in Idaho. Three streams were chosen with one being a backup location. These are the Bloomington, Deep, and Toponce Creeks, which traverse the Cache and Caribou National Forests and the Curlew National Grasslands. The study calls for releases of 25 microcuries of C–14 at a time, with no more than 100 microcuries used in each stream in a year.

FOR FURTHER INFORMATION CONTACT: Joseph Wang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 415–7909.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment action would authorize personnel from Idaho State University to use C–14 labeled particulate organic material in dispersion studies in two streams in Idaho. Three streams were chosen with one being a backup location. These are the Bloomington, Deep, and Toponce Streams, which traverse the Cache and Caribou National Forests and the Curlew National Grasslands. The study calls for release of 25 microcuries of C–14 at a time, with no more than 100 microcuries used in each stream in a year. The amount of C–14 used in an experiment is such that the radioactivity is ''instantaneously'' diluted to concentrations below drinking water standards and additional dilution occurs continuously thereafter.

Background

Idaho State University (ISU) submitted a letter to the NRC, dated December 9, 1994, requesting to amend its Byproduct Material License No. 11–27380–01. ISU's request is for authorization to use C–14 as radioisotopic tracers to study the dispersal and fate of ''fine particulate organic matter'' (FPOM) in lotic ecosystems. This study is funded through a grant by the National Science Foundation to the Stream Ecology Center at ISU. Along with its letter, ISU also submitted an Environmental Assessment (EA) for its proposed action based on guidelines provided by NRC's RIV Office.

Need for the Proposed Action

FPOM constitutes that bulk of particulate organic matter carried in the suspended matter in streams and is a major component of food webs, energy flow, and organic matter budgets in stream ecosystems. The issues involved in FPOM dynamics cover a range of disciplines, and workers from many different areas, from water treatment engineering to population dynamics of marine organisms, face similar questions about how particles exchange between surfaces and the suspended state. The proposed research by ISU is important to further major advances in the understanding of the ecology of stream ecosystems because it will result in determination of: (1) The detailed dynamics of FPOM transport over a range of flow and channel conditions, (2) the specific mechanisms of transport and deposition, and (3) the relative importance of physical and biological factors in the transport of organic matter in streams.

In its submitted EA, the applicant has considered alternatives to the proposed isotope study. Specifically, two alternatives to radiolabeled natural FPOM have been reviewed for the proposed study: Use of exotic pollen and use of plastic microspheres. Although both of these options may hold promise for future FPOM research, certain characteristics of each may cause these particles to behave differently from natural FPOM, thus defeating the purpose of the proposed study.

Environmental Impacts of the Proposed Action

In the EA submitted by ISU, and based on telephone discussion with the licensee, the applicant stated that it's current plan is to conduct approximately two or three releases per year, per stream. The study will be for 2 years using no more than two streams. ISU identified three streams (i.e., Bloomington Creek, Deep Creek, and Toponce Creek) for this study, with the Toponce Creek being a backup location. The releases would be in medium-sized surface waters (i.e., flowing streams having discharge rates of 0.25 to 0.75 cubic meters per second or more) located in remote areas, on Federal lands, miles away from human habitation and domestic animals. Each release would be separated by 7 or more days and involve 25 microcuries of C–14; thus, the total amount of C–14 introduced into any stream in any year would not exceed 100 microcuries. The introduction of C–14 into a stream takes place over several hours and the concentrations in the stream are immediately diluted to 26 picocuries per liter or less at the point of release. These levels are well below Environmental Protection Agency's established drinking water standard of 2500 picocuries per liter for C–14 (40 CFR 141.16), even at the point (and time) of introduction.

The study sites have been selected so that the nearest human residence is located several miles from the study area. The nearest human community is located about 5 miles away in Bloomington, Idaho. No endangered plants or species will be affected by this study. According to National Council on Radiation Protection and Measurements (NCRP) Publication No. 45 on Natural Background Radiation, there are 303.3 million curies or 303.3 trillion microcuries of natural C–14 in the environment. Despite this large inventory of natural C–14 in the environment, the average annual whole body dose, due to natural C–14 to an adult member of the general public, is estimated to be 0.7 millirem (page 42, NCRP 45) per year. Therefore, the dose to an adult member of the general public, due to no more than 200 microcuries of C–14 released per year over a predominately remote Federal lands, is insignificant.

ISU has also submitted to the NRC, written responses from the Division of Environmental Quality, Idaho Department of Health and Welfare; the U.S. Environmental Protection Agency, Region X Office; and the U.S. Department of Agriculture, U.S. Forest Service. All three agencies responded in writing that they have no objections to the proposed ISU study. In addition, the U.S. Forest Service has made available in November, 1994, the submitted EA, for a 45 days public review and comment period.

Conclusions

Based on the foregoing assessment, the NRC staff concludes that the environmental effects of using C–14 in the proposed ISU stream ecosystems study are expected to be extremely small. Authorizing the study will help to better understand how to preserve our ecosystems. Since ISU's proposed study will be conducted in a predominately remote Federal land administered by the U.S. Forest Service, there is no environmental justice issue in this EA.

Therefore, in accordance with 10 CFR 51.31, a Finding of No Significant Impact is considered appropriate for this proposed action.

Agencies and Persons Consulted

In performing this assessment and in accordance with the NRC's Office of Nuclear Material Safety and Safeguards procedure 1–48, the staff consulted with Mr. Steve Oberg, State Liaison Officer with the NRC, Division of Environmental Quality, State of Idaho, on March 17, 1995, at (208) 334–0436. The State of Idaho has no objection to the proposed action. The staff also contacted Mr. Lee Leffert of the U.S. Forest Service, Department of Agriculture, on March 21, 1995, at (208) 236–7534. The U.S. Forest Service informed the NRC that based on comments received on its **Federal Register** Notice, it is preparing a Finding of No Significant Impact (FONSI) and will issue a Decision Notice authorizing ISU's project implementation as proposed.

Finding of No Significant Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, that the proposed action to amend Byproduct Material License No. 11–27380–01 to permit the introduction of C–14 into two streams, if granted, would not have a significant effect on the quality of the human environment and that an environmental impact statement is not required. This determination is based on the foregoing environmental assessment performed in accordance with the procedures and criteria in 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

For further details on this action, see ISU's letter, dated December 9, 1995, and the attached EA, requesting amendment of License No. 11–27380–01 and related correspondence. These documents (in Docket No. 030–32322) may be examined or copied for a fee in the Commission's Region IV Walnut Creek Field Office's Public Document Room, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596.

Notice of Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this license amendment may file a request for a hearing. Any request for a hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of publication of this notice in the **Federal Register** and must be served on the NRC staff by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or be delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; and must be served on the applicant by mail or delivery to Idaho State University, Technical Safety Office, Physical Science 103, 785 South Eighth Avenue, Campus Box 8106, Pocatello, ID 83209. The request for a hearing must comply with the requirements set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Material Licensing Proceedings.'' Subpart L of 10 CFR Part 2, may be examined or copied for a fee in the Commission's Region IV Walnut Creek Field Office's Public Document Room, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596 or in the Commission's Public Document Room, 2120 L Street (Lower Level), NW, Washington, DC 20555.

As required by Part 2, Subpart L (10 CFR 2.1205), the request for hearing must describe in detail: (1) The interest of the requestor in the proceeding; (2) how that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (g) of 10 CFR 2.1205; (3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) of 10 CFR 2.1205(c).

The factors in 10 CFR 2.1205(g), which must be addressed in the request for hearing include: (1) The nature of the requestor's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland this 19th day of April 1995.

For The U.S. Nuclear Regulatory Commission

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–10126 Filed 4–24–95; 8:45 am]

BILLING CODE 7590–01–M

Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–390 and 50–391]

The U.S. Nuclear Regulatory Commission (the Commission) is considering incorporating an exemption from certain requirements of its regulations in the operating licenses for operation of the Watts Bar Nuclear Plant, Units 1 and 2, located in Spring City, Tennessee. Operating licenses have not been issued for Watts Bar; Units 1 and 2 are currently under Construction Permits CPPR–91 and CPPR–92, respectively.

Environmental Assessment

Identification of Proposed Action

10 CFR 73.55(c)(10) requires a license applicant whose application was submitted prior to August 31, 1994, to incorporate a land vehicle bomb control program into the site physical security plan and implement it by the date of receipt of the operating license. Since Watts Bar Unit 1 will seek to obtain an operating license ahead of the schedule by which operating power reactors are required to fully implement the vehicle control measures, the applicant requested, by letter dated November 30, 1994, that Watts Bar be granted the same implementation date (February 29, 1996) imposed on operating reactor licensees to implement the land vehicle bomb control program.

The Need for the Proposed Action

The Commission extended the implementation schedule for operating plants to 18 months from the effective date of the rule, given that it involves a new power for power reactor sites, that some procurement problems may arise and that scheduling problems may occur. Under the present rule and current licensing schedule, the applicant would be required to implement the rule several months (depending on the actual date of operating license issuance) ahead of operating power reactors. The applicant will implement interim compensatory measures to justify the scheduler exemption.

Environmental Impacts of the Proposed Action

The applicant's request for scheduler exemption involves delaying, by several months, implementation of control measures per the regulation. The proposed action will not increase the probability or consequences of accidents, makes no changes in the types of any effluents that may be released offsite, and does not increase the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement and Supplement 1 related to operation of the Watts Bar Nuclear Plant, dated December 1978 and April 1995, respectively.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Tennessee State official regarding the environmental impact of the proposed action. The State official had no comment.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for exemption dated November 30, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 18th day of April 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

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BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Expedited Review of Revised Form RI 10–72

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for expedited review of a revised information collection. Form RI 10–72, Client Satisfaction Survey, is used to determine how well the Office of Personnel Management has served federal civil service annuitants and survivor annuitants. An expedited clearance is requested for this survey questionnaire so we can meet our scheduled mailing date of May 1, 1995.

The questionnaire will be sent to approximately 1500 annuitants and will require approximately 25 minutes to complete, for a total public burden of 625 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received by April 28, 1995. OMB has been requested to take action within five (5) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lawrence P. Holman, Chief, Quality Assurance Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4316, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–4025.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Dear Annuitant: We are conducting a survey of people across the country to find out how well the Office of Personnel Management is serving the Federal annuitant population.

You are one of a relatively small number of annuitants randomly selected for this survey, so your answers are very important. This is your chance to tell us how satisfied you are with the service you receive from the Office of Personnel Management.

This survey is completely voluntary. It is your choice whether or not to help us, and your decision will not be recorded or affect your eligibility for any Government benefits. Your answers will be kept confidential. No permanent record will be kept on how you answered any of the questions.

If you have any questions about our survey, please call collect at (202) 606–0283. This is a special telephone number we have established just for this survey. Your questions about your claim or the benefits you are receiving should continue to be referred to OPM's Retirement Information Office at (202) 606–0500.

Please use the addressed, postage-paid envelope to return your questionnaire to us after you have completed it. Remember, your answers will help OPM to improve its services to you and your fellow annuitants.

Thank you for your help.

Sincerely,

James B. King,

Director.

Dear Annuitant: Several weeks ago, we mailed you a questionnaire regarding the

service you receive from the Office of Personnel Management. To date we have not heard from you. In case our other letter did not reach you or has been misplaced, a new questionnaire is enclosed. I urge you to complete it and return it in the enclosed addressed, post-paid envelope.

This survey is completely voluntary and your responses will not affect your eligibility for any Government benefits. However, as you are one of a relatively small number of annuitants randomly selected for this survey, your answers are very important. The high percentage of people who have already returned their questionnaires is encouraging, but we need your opinions too.

If you have any problems or questions regarding this survey questionnaire, please call collect at (202) 606–0283. This is a special phone number we have established just for this survey. Your questions about your claim or the benefits you are receiving should continue to be referred to OPM's Retirement Information Office at (202) 606–0500.

Thank you for your cooperation.

Sincerely,

James B. King,

Director.

Office of Personnel Management

Client Satisfaction Survey

How Well Has the Office of Personnel Management Served You?

Retirement and Insurance Service

Survey of How Well the Office of Personnel Management Serves Federal Annuitants

Conducted by OPM's Retirement and Insurance Service

Instructions

Please answer the questions on the following pages and return the questionnaire to us in the enclosed envelope. It should take about 25 minutes to finish. If you have trouble filling out this questionnaire, you may have a relative or friend help you. The answers you give, however, should be based on your own feelings and opinions and refer to your experience with the Office of Personnel Management (OPM).

Please return the completed questionnaire in the postage-paid envelope to: U.S. Office of Personnel Management, Client Satisfaction Survey, Room 4316, RIS/QAD, Attention: Dom Marro/Nancy Wolf, 1900 E Street, N.W., Washington, DC 20415.

If you have any questions about this questionnaire, please call collect at (202) 606–0283. We will be happy to help you.

Any questions about your claim or your benefits should be directed to OPM's Retirement Information Office at (202) 606–0500.

Public Burden Statement

We think providing this information takes an average 25 minutes per response, including the time for reviewing instructions, getting the needed data, and reviewing the requested information. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing time needed, to the Office of Personnel Management, Reports and Forms Officer, 500 CHP, Washington, DC 20415.

Privacy Act Statement

Title 5, U.S. Code, 83 and 84 authorizes the solicitation of this information. The purpose of this collection of information is to find out how well the Office of Personnel Management is serving the Federal annuitant population. Participation is voluntary for those annuitants who are selected for the survey. The information provided by annuitants will be kept confidential and will not be released outside of the Office of Personnel Management.

Client Satisfaction Survey

Part I

Mail To/From the Office of Personnel Management (OPM).

1. Did you write to OPM regarding retirement or insurance matters within the past 12 months? (Do not include mailing in any forms you may have been asked to complete.)

(Check One)

a. ☐ No (Skip to Question #7)
b. ☐ Yes.

2. If you have written to OPM, about how many times in all have you written in the past 12 months?

(Check One)

a. ☐ Once.
b. ☐ Twice.
c. ☐ Three times.
d. ☐ More than 3 times.

3. What did you write about?

(Check All That Apply)

a. ☐ I asked a general question about my benefits.
b. ☐ I asked a specific question about an action that was taken on my annuity account (such as a change in my monthly benefit).
c. ☐ I asked that some action be taken on my annuity account (such as an address change or health benefits change).
d. ☐ I complained or expressed concern about some aspect of the retirement or insurance program (such as the cost of or amount of insurance).
e. ☐ I complained, expressed concern, or followed up on an action that I had requested (such as the amount of time taken to process a requested action).
f. ☐ Other (Please specify.)

_____

_____

4. Why did you choose to write to OPM rather than telephone?

(Check All That Apply)

a. ☐ I prefer to write a letter rather than telephone.
b. ☐ I could not get through by telephone.
c. ☐ Based on my past experience, it is difficult to get retirement or insurance problems resolved by telephoning OPM.
d. ☐ It is not convenient for me to call OPM during its regular business hours.
e. ☐ I did not want to pay for a long distance telephone call to OPM.
f. ☐ Other (Please specify.)

_____

_____

5. Overall, how satisfied or dissatisfied were you with the content of the response to the letter(s) you wrote to OPM within the last 12 months?

(Check One)

a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.
f. ☐ I never received a response.

6. Overall, how satisfied were you with the *amount of time* it took OPM to respond to the letter(s) you wrote within the last 12 months?

(Check One)

a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.
f. ☐ I never received a response.

7. OPM mails various informational materials and notices to its annuitant beneficiaries. In general, how easy or difficult to understand is the mail you have received from OPM?

(Check One)

a. ☐ Very easy to understand.
b. ☐ Generally easy to understand.
c. ☐ Neither easy nor difficult to understand.
d. ☐ Generally difficult to understand.
e. ☐ Very difficult to understand.

8. What do you usually do with the OPM informational materials and notices sent to you?

(Check One)

a. ☐ I read all the information that is sent to me.
b. ☐ I glance at the notices to see if they apply to me but find that most of them don't.
c. ☐ I glance at the notices and find that most of them do apply to me.
d. ☐ I don't read the notices. If there is something I need to know I ask about it.
e. ☐ Other (Please specify.)

_____

_____

9. If you have sought assistance to understand a notice you received from OPM, where did you last seek assistance?

(Check One)

a. ☐ I did not seek assistance (Skip to Question #11.)
b. ☐ OPM office in Washington, D.C.
c. ☐ Another OPM office (that is, not in Washington, D.C.).
d. ☐ The agency where I used to work.
e. ☐ Another agency.
f. ☐ The National Association of Retired Federal Employees (NARFE).
g. ☐ The union that represented me as an employee.
h. ☐ Someone I know who received the same notice.
i. ☐ Friends or family.
j. ☐ Other (Please specify.)

_____

_____

10. How satisfied or dissatisfied were you with the help you received from the place noted above?

(Check One)

a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

11. The following is a list of pamphlets OPM provides to its customers. If you have read any of the pamphlets within the past 12 months, indicate how clear the pamphlet was.

(Check Only One Rating Column For Each Pamphlet You Have Read In The Past 12 Months)

OPM pamphlets	Clear	Somewhat clear	Not clear
a. Information for Annuitants			
b. Information for Annuitants About the Federal Employees Health Benefits Program			
c. Information for Survivor Annuitants			
d. Death Benefits for Children			
e. Information for Disability Annuitants			

12. The following is a list of forms that OPM provides to its customers. If you had to complete any of the OPM forms within the past 12 months, please indicate if the instructions were clear and understandable.

(Check Only One Rating Column For Each Form You Have Completed In The Past 12 Months.)

OPM forms	Clear	Somewhat clear	Not clear
a. Open Season Health Benefits forms			
b. Student-child entitlement forms			
c. Disability retirement earnings survey forms			
d. Change of Address forms			
e. Annuity payment direct deposit forms			

13. Have you ever requested the assistance of any of the following parties regarding a retirement or insurance matter handled by OPM?

(Check All That Apply)
a. ☐ My Congressional Representative.
b. ☐ My Senator.
c. ☐ The White House.
d. ☐ The Director of OPM.
e. ☐ Official from some other Federal agency.
f. ☐ The news media.
g. ☐ No, I have not requested assistance of any of the above parties.

Part II

Telephoning the Office of Personnel Management

14. What type of telephone service do you have?

(Check One)
a. ☐ Touch tone.
b. ☐ Rotary dial or pulse.
c. ☐ I don't know.
d. ☐ I don't have a phone.

15. Have you tried to call OPM's retirement offices within the past 12 months?

(Check One)
a. ☐ No. (Skip to Question #25.)
b. ☐ Yes.

16. In the past 12 months, how many different times did you call OPM's retirement offices?

(Check One)
a. ☐ Once.
b. ☐ Twice.
c. ☐ Three times.
d. ☐ More than three times.

17. Think about all the times you've called OPM's retirement offices over the past 12 months, and indicate which of the following things happened when you called.

(Check All That Apply)
a. ☐ I got through without any problem.
b. ☐ My call had to be transferred or I was told to call a different number.
c. ☐ An answering machine put me on hold.
d. ☐ A person put me on hold.
e. ☐ I gave up after being placed on hold.
f. ☐ I had to call several times before getting through.
g. ☐ My call was disconnected.
h. ☐ I got a busy signal.
i. ☐ Other. (Please specify.)

_____

_____

18. On your most recent phone call how many times did you have to dial before you got through?

(Check One)
a. ☐ Once.
b. ☐ Twice.
c. ☐ Three times.
d. ☐ More than three times.
e. ☐ I never got through.
f. ☐ I don't remember.

19. Listed below are several reasons why a person might telephone OPM. In your most recent phone call, indicate the reason(s) you called.

(Check All That Apply)
a. ☐ I had a question about a claim for retirement or survivor benefits.
b. ☐ I asked about health benefits or life insurance coverage.
c. ☐ I asked about a tax related matter.
d. ☐ I asked about an adjustment to my benefit.
e. ☐ I asked about a benefit for a child(ren).
f. ☐ I asked about a notice or other mail I received from OPM.
g. ☐ I was following up on a previous call or request that some action be taken.
h. ☐ OPM asked me to contact them.
i. ☐ I reported the death of an annuitant.
j. ☐ I notified OPM of a name or address change.
k. ☐ I reported non-receipt of a benefit check.
l. ☐ I telephoned OPM for some other reason. (Please specify.)

_____

_____

20. In general, how courteous was the OPM employee(s) during this call?

(Check One)
a. ☐ Very courteous.
b. ☐ Generally courteous.
c. ☐ Neither courteous nor discourteous.
d. ☐ Generally discourteous.
e. ☐ Very discourteous.

21. How clearly did the OPM employee answer your question(s)?

(Check One)
a. ☐ Clearly.
b. ☐ Somewhat clearly.
c. ☐ Not clearly.

22. Think about the reason why you last contacted OPM by telephone. What kind of job has OPM done to handle this matter?

(Check One)
a. ☐ Very good job.
b. ☐ Good job.
c. ☐ Fair job.
d. ☐ Poor job.
e. ☐ Very poor job.

23. Once again, think about the reason why you last contacted OPM by phone. How satisfied are you with the amount of time it has taken OPM, so far, to take care of this matter?

(Check One)
a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

24. About how long (including time you waited, if any) did your last phone call to OPM last?

(Check One)

a. ☐ Less than 3 minutes.
b. ☐ At least 3 but less than 10 minutes.
c. ☐ At least 10 but less than 20 minutes.
d. ☐ 20 minutes or more.
e. ☐ I don't remember.

Part III

Benefits From the Office of Personnel Management

25. Do you usually get your retirement or survivor annuity payment by the first business day of the month?

(Check One)
a. ☐ Yes.
b. ☐ No.

26. In most cases, interim or special payments are paid until an applicant's annuity claim is completely processed and regular payments begin. Was this the case for your initial annuity claim?

(Check One)
a. ☐ Yes.
b. ☐ No.
c. ☐ I don't remember.

27. After you applied for your annuity benefit, when did you receive your first payment from OPM?

(Check One)
a. ☐ Much sooner than I expected.
b. ☐ A little sooner than I expected.
c. ☐ About when I expected.
d. ☐ A little later than I expected.
e. ☐ A lot later than I expected.
f. ☐ I don't remember.

28. Listed below are some of the actions that can be taken on an annuity account. Please check the *most recent actions* that were taken on your account.

(Check All That Apply)
a. ☐ No action has been taken on my account within the past 12 months. (Skip to Question #33.)
b. ☐ An initial claim for retirement or survivor benefits.
c. ☐ Stop or change Federal tax withholding.
d. ☐ Change health benefits plans or options.
e. ☐ Change life insurance option(s).
f. ☐ Change mailing address.
g. ☐ Direct annuity benefits to a bank account.
h. ☐ Adjust annuity benefit after a change in marital status.
i. ☐ Suspend annuity payments.
j. ☐ Add or drop child(ren) benefit.
k. ☐ Non-receipt of a benefit check.
l. ☐ Other reason. (Please specify.)

_____

_____

29. If you requested that OPM take action on your account, how was (were) the actions(s) handled?

(Check All that Apply)
a. ☐ I did not request action. (Skip to Question #33.)
b. ☐ The action was taken based on my telephone request.
c. ☐ The action was taken after my first request.
d. ☐ The action was taken only after I made a second request.
e. ☐ The action was taken only after I made more than two requests.
f. ☐ I don't remember.

30. Overall, how satisfied were you with the way the above action(s) was (were) handled by OPM?

(Check One)
a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

31. Did you receive some form of communication from OPM about the action(s) that was (were) taken?

(Check One)
a. ☐ No, I never received any communication regarding the action that was taken. (Skip to Question #33.)
b. ☐ Yes, a computer generated notice.
c. ☐ Yes, a hand-written notice.
d. ☐ Yes, a form letter or notice.
e. ☐ Yes, a typed letter.
f. ☐ Yes, some other type of communication.
g. ☐ I don't remember. (Skip to Question #33.)

32. Was the communication about the action on your account clear to you?

(Check One)
a. ☐ Yes, it was very clear.
b. ☐ It was somewhat clear.
c. ☐ No, it was not clear.

Part IV

Overall Quality of the Office of Personnel Management's Service

33. Overall, since your annuity began, how would you rate the service that OPM has given you?

(Check One)
a. ☐ Very good.
b. ☐ Good.
c. ☐ Fair.
d. ☐ Poor.
e. ☐ Very poor.

34. How would you rate OPM's service in comparison to the service you get from other Federal, State, and local government agencies?

(Check One)
a. ☐ OPM much better than others.
b. ☐ OPM somewhat better than others.
c. ☐ OPM is about as good as others.
d. ☐ OPM somewhat worse than others.
e. ☐ OPM much worse than others.
f. ☐ Can't say, have had no contact with other government agencies.

35. If you must contact OPM in the future, would your first preference be to write, telephone, or visit?

(Check One)
a. ☐ Write.
b. ☐ Telephone.
c. ☐ Visit.

36. The following is a list of important service quality factors. Please read through the list. From your point of view, please rank the five most important factors to you in your dealings with OPM. Mark ''1'' next to the item that is most important to you, a ''2'' next to the second most important factor, a ''3'' next to the third most important factor, etc.

(Rank Only The Five Most Important Factors From ''1'' to ''5.'' Leave The Remaining Factors Blank.)

Ranking	OPM service quality factors
	a. Concern for me and my problems b. Friendly OPM employees c. Knowledgeable OPM employees d. Easily obtainable information e. Clear information about changes in law and regulations f. Clear statements and correspondence g. Clear information about payments or services h. Fair treatment of all customers i. Timely action on my concerns and complaints j. Timely payments k. Accurate answers to questions l. Replacement of missing payments m. Minimal interruptions of benefits n. Flexible billing and payment arrangements for benefit overpayments o. Accurate payments p. Good telephone service

If you retired since January 1, 1995, please answer the next three questions. Otherwise, skip to question #40.

37. When you retired, how satisfied were you with how OPM handled all aspects of your retirement (including, if applicable, your requests for direct deposit of your monthly retirement check in your bank and federal income tax withholdings from your check)?

(Check One)
a. ☐ Very Satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

38. If you requested that your retirement check be deposited directly in your bank by OPM, how satisfied were you with how long it took for your bank account to be credited with your first retirement payment?

(Check One)
a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied or dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.
f. ☐ I did not request that my retirement check be deposited directly in my bank.

39. What kind of job did OPM do in giving you professional and personalized information concerning your retirement?

(Check One)
a. ☐ Very good job.
b. ☐ Good job.
c. ☐ Fair job.
d. ☐ Poor job.
e. ☐ Very poor job.

Answer the following question (Question #40) *only* if you began receiving, since January 1, 1995, a monthly *survivor's* check as a *result of the death of a Federal retiree*. Otherwise, skip to question #41.

40. How satisfied were you with the assistance you received from OPM in filing the paperwork needed to obtain benefits?

(Check One)
a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied or dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

41. Do you have a personal computer and a modem?

(Check One)
a. ☐ Yes.
b. ☐ No. (Skip to Question #43)

42. Do you have access to any of the following On-line services?

(Check All that Apply)
a. ☐ CompuServe.
b. ☐ USENET.
c. ☐ America On-line.
d. ☐ Prodigy.
e. ☐ Genie.
f. ☐ Other (Please specify.)

_____

_____

Part V

Retirement Counseling

Please answer the following questions *only* if you retired within the last two years.

43. Did you receive retirement counseling?

(Check One)
a. ☐ No. (Skip to Question #51.)
b. ☐ Yes.

44. Who initiated the contact to plan for your retirement?

(Check One)
a. ☐ I did.
b. ☐ My agency did.
c. ☐ I don't remember.

45. Who did the counseling?

(Check One)
a. ☐ An employee of my former agency.
b. ☐ A contract employee to my former agency.
c. ☐ I don't know.

46. When did your agency start to counsel you concerning your retirement planning?

(Check One)
a. ☐ More than one year before I retired.
b. ☐ Six to twelve months before I retired.
c. ☐ Less than six months before I retired.

47. What did the counseling cover?

(Check All That Apply)
a. ☐ Retirement coverage.
b. ☐ Amount of annuity.
c. ☐ Survivor benefits.
d. ☐ Health insurance benefits.
e. ☐ Life insurance benefits.
f. ☐ Social Security benefits.
g. ☐ Thrift Savings Plan.
h. ☐ Other (Please specify.)

_____

_____

48. How satisfied were you that the information from your agency (including responses to your questions and concerns) was accurate and up to date?

(Check One)
a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

49. How satisfied were you with how well your agency helped you in taking appropriate actions (such as submitting retirement forms and making decisions about health and life insurance) and in learning what to expect after you retired (such as how long it would take to get your annuity, notices to be received, tax withholding, etc.)?

(Check One)
a. ☐ Very satisfied.
b. ☐ Generally satisfied.
c. ☐ Neither satisfied nor dissatisfied.
d. ☐ Generally dissatisfied.
e. ☐ Very dissatisfied.

Comments (Especially about any improvements you would suggest.)

_____
_____
_____
_____
_____
_____
_____
_____

50. How did your agency's estimate of your annuity compare with the annuity computed by OPM?

(Check One And Skip To Question #52)
a. ☐ The annuity estimate was close to the annuity computed by OPM.
b. ☐ The annuity estimate was significantly more than the annuity computed by OPM.
c. ☐ The annuity estimate was significantly less than the annuity computed by OPM.
d. ☐ I did not receive an annuity estimate from my agency.
e. ☐ I don't remember.

51. If your employing agency never counseled you, where did you go to get information on retirement and insurance matters?

(Check All That Apply)
a. ☐ National Association of Retired Federal Employees (NARFE).
b. ☐ Private publications (such as Federal Employees Almanac).
c. ☐ I contacted OPM directly.
d. ☐ Other.
e. ☐ I didn't receive any retirement planning information.

52. In planning your retirement, did you?

(Check One)
a. ☐ Attend agency sponsored retirement seminars AND receive individual counseling from your personnel office.
b. ☐ Only attend an agency sponsored retirement seminar.
c. ☐ Only receive individual counseling.
d. ☐ Neither retirement seminars nor individual counseling was provided by my agency.

53. Were you provided a copy of ''Thinking About Retirement''?

(Check One)
a. ☐ Yes.
b. ☐ No.
c. ☐ I don't know.

Thank you for your cooperation. We appreciate your help. Please return the completed questionnaire in the postage paid envelope to: U.S. Office of Personnel Management, Client Satisfaction Survey, Room 4316, RIS/QAD, Attention: Dom Marro/Nancy Wolf, 1900 E Street, N.W., Washington, DC 20415.

If you have any comments about how OPM has served you or if you have suggestions on how we can improve our service, please write them in the space below.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

If you have questions concerning your annuity or survivor annuity, write directly to: U.S. Office of Personnel Management, Retirement Operations Center, Boyers, PA 16017.

[FR Doc. 95–10122 Filed 4–24–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21021; No. 812–8154]

General American Life Insurance Company, et al.

April 19, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: General American Life Insurance Company (''General American''), General American Separate Account Eleven (''Account 11'') and Walnut Street Securities, Inc. (''Underwriter'').

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) granting exemptions from Sections 27(c)(2) and 27(e) of the 1940 Act and from Rules 6e–3(T)(b)(13)(vii), 6e–3(T)(c)(4)(v) and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit Account 11 and other variable life insurance separate accounts that General American may establish in the future (''Future Accounts'') to: (1) Deduct a charge from premium payments under certain variable life insurance contracts to compensate General American for its increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended, to the receipt of such payments; and (2) to permit General American not to send such contract owners a written notice of their refund and withdrawal rights.

FILING DATES: The application initially was filed on November 9, 1992, declared inactive on August 12, 1993, and amended on September 12, 1994, and April 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 15, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: c/o Matthew P. McCauley, Esq., General American Life Insurance Company, 700 Market Street, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. General American, a mutual life insurance company, is principally engaged in offering insurance policies and annuity contracts. General American is authorized to conduct business in the District of Columbia, all states except New York, and ten Canadian provinces.

2. Account 11 is a separate account established by General American and registered as a unit investment trust under the 1940 Act. Account 11 currently has 13 sub-accounts, each of which invests in corresponding portfolios of one of four series-type registered open-end, diversified management investment companies (collectively, ''Funds'').[1] The Future Accounts will be separate accounts, as defined in Rule 0–1(e) under the 1940 Act, and registered as unit investment trusts under the 1940 Act.

3. The Underwriter acts as principal underwriter for certain variable life and variable annuity contracts by General American. The Underwriter is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. The Underwriter is an indirect wholly-owned subsidiary of General American.

4. Account 11 currently funds two flexible premium variable life insurance contracts offered by General American, the VUL–95 Contract and the General Select Plus Contract (together, ''Existing Contracts''). Account 11 will, and Future Accounts may, be used to fund a new flexible premium variable life insurance contract (''Contract''), as well as other flexible premium variable life insurance contracts (''Future Contracts'') that in the future may be offered by General American. (Future Contracts and Existing Contracts are hereinafter referred to together as ''Other Contracts''.) Interests in all of the contracts are or will be registered as securities under the Securities Act of 1933.

5. The Contract offers the payment of premiums in any amount and frequency, subject to certain limitations, three death benefit options, cash value, loan privileges and other traditional life insurance features. The Contract owner may receive a refund of premium payments by cancelling and returning the Contract within the latest of: (1) 20 days of receipt (30 days for California residents, and for age 60 or older), (2) 45 days of signing the application, or (3) 10 days of General American's mailing a notice of this provision to the Contract owner.[2]

6. Certain charges and deductions are made under the Contract to compensate General American for its costs and expenses.

(a) Premium Tax Charge

A charge of 2.10% is deducted from each premium payment for state taxes assessed on premium payments received by General American. Such premium taxes vary from jurisdiction to jurisdiction and range between 0.75% to 3.50%. This charge represents the average deduction considered necessary for General American to pay such taxes. Some jurisdictions do not impose a premium tax while others may impose a tax that is greater than or less than the 2.10% deduction under the Contract. If the average premium tax increases in the future, General American may increase this deduction.

(b) Section 848 Deferred Acquisition Costs Charge

A charge of 1.25% (''DAC Tax Charge'') will be deducted from each premium payment to reimburse General American for its increased federal income tax burden resulting from changes made to Section 848 of the Internal Revenue Code of 1986 (''Code''), by the Omnibus Budget Reconciliation Act of 1990 (''OBRA 1990''), affecting the treatment of deferred acquisition costs. The requested order would permit the deduction of 1.25% of each premium payment under the Contract and Future Contracts. The 1.25% DAC Tax Charge will not be deducted under Existing Contracts issued prior to the receipt of the requested order. However, the DAC Tax Charge may be deducted under Existing Contracts issued after issuance of the requested order[3] and after endorsements permitting the charge have been approved by insurance regulators in each applicable jurisdiction. Applicants represent that the DAC Tax Charge is a legitimate expense of the company, is not used for sales and distribution expenses and will be reasonably related to General American's increased federal tax burden.

(c) Administration Charge

The monthly administration charge is $13 per month during the first Contract year, and $6 per month thereafter. This charge cannot be increased under a Contract once it is issued.

(d) Selection and Issue Expense Charge

The selection and issue expense charge is $0.16 per month per $1,000 of face amount during the first Contract year and $0.01 per month per $1,000 of face amount thereafter. In the event that the face amount is increased (other than by a change in death benefit options or increasing death benefit rider), this charge is $0.16 per month per $1,000 of increased face amount during the first Contract year following the increase and $0.01 per month per $1,000 of face amount thereafter.

(e) Cost of Insurance Charge

The monthly cost of insurance charge varies with each Contract because it is based on the attained age, rate class, and sex (except Montana) of the insured.

[1] The Funds include General American Capital Company, Variable Insurance Products Fund, Variable Insurance Products Fund II, and Van Eck Investment Trust.

[2] Contracts purchased in Kansas provide for a return of an amount equal to the: (1) difference between premium payments and amounts allocated to Account 11; and (2) cash value on the date the Contract is returned.

[3] Applicants undertake to make this representation in an amendment to the Application, which is to be filed during the notice period.

(f) Charge for Riders

A monthly charge will be deducted for any riders. This charge will vary with each Contract.

(g) Mortality and Expense Risk Charge

A daily charge equivalent to an effective annual rate of .90% of Account 11's average daily net assets [4] will be deducted for General American's assumption of mortality and expense risks.

(h) Contingent Deferred Sales Charge (''CDSC'')

For a period of up to 15 years after issuance of the Contract or an effective face amount increase, General American will impose a CDSC upon surrender, lapse, a requested decrease in face amount or a partial withdrawal that results in a decrease in face amount.

The amount of the CDSC will depend upon a number of factors, including the type of event, amount of premium payments made prior to the event, number of Contract years that has elapsed since issuance of the Contract or face amount increase, as applicable.

A separate CDSC applies to the initial face amount and to each increase in face amount and is deducted whenever, and to the extent that, a surrender, lapse or face amount decrease affects the applicable increment of face amount. The length of time over which a CDSC will apply to any increment of face amount will depend upon the attained age of the insured on the issue date or the effective date of the increase, as applicable, and the insured's sex and risk class, as follows:

CONTINGENT DEFERRED SALES CHARGE PERIOD

[Duration in years]

Insured's age	Male non-smoker	Male smoker	Female non-smoker	Female smoker
0–50	15	15	15	15
51	14	14	14	14
52	13	13	13	13
53	12	12	12	12
54	11	11	11	11
55–79	10	11	10	10
80	10	6	10	10

The CDSC will equal the CDSC grading percentage [5] multiplied by the sum of (1) and (2) where: (1) is 40% of the lesser of the premium payments made or the target premium for the Contract, and (2) is the excess premium surrender charge factor multiplied by premium payments made in excess of the target premium for the Contract. With regard to a face amount increase, multiplied by the sum of (1) and (2) where: (1) Is 40% of the lesser of the premium payments attributable to the increase, and (2) is the excess premium surrender charge factor multiplied by the premium payments attributable to the increase in excess of the target premium for the increase. The excess premium surrender charge factors vary with the attained age, sex and risk class of the insured. The target premium for the Contracts is somewhat less than the guideline annual premium (''GAP'') as defined in Rule 6e–3(T)(c)(8).

The CDSC for the initial face amount during the first two Contract years will not exceed: (a) 30% of the first GAP paid under the Contract; (b) 10% of the second GAP paid; and (c) 9% of premium payments made in excess of two GAPs. The CDSC for any increase in face amount during the first two Contract years following the increase will not exceed: (a) 30% of the first GAP attributable to the increase; (b) 10% of the second GAP attributable to the increase; and (c) 9% of premium payments attributable to the increase of two GAPs.

7. *Application of Section 848 of the Code.* Section 848 of the Code, as amended by OBRA, requires life insurance companies to capitalize and amortize over a period of ten years part of their general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848 effectively accelerates the realization of income from certain categories of life insurance and other contracts (''Specified Contracts'') categorized under this Section and, thus, the payment of taxes on that income. The Contract and Other Contracts will be categorized under Section 848 as Specified Contracts. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Specified Contracts.

8. The amount of deductions subject to Section 848 equals a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under the Specified Contracts. Consequently, 7.7% of the net premiums received must be capitalized and amortized under the schedule set forth in Section 848(c)(1) of the Code.

9. The increased tax burden on every $10,000 of net premiums received is quantified as follows. For each $10,000 of net premiums received in a given year, Section 848 requires General American to capitalize $770 (*i.e.*, 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50), which is subject to taxation at the corporate tax rate of 35%, results in General American owning $256.03 (.35% × $731.50) more in taxes for the current year than it otherwise would have owed prior to OBRA 1990. However, the current tax increase will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

10. In its business judgment, General American believes it appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions for the following reasons. Capital that General American must use to pay its increased federal tax

[4] The value of Account 11's net assets will reflect operating expenses of the Funds held by Account 11.

[5] Grading percentages range, on a declining scale, policy year, and vary depending on the sex, issue

burden under Section 848 will be unavailable for investment. The cost of capital used to pay this increased tax burden essentially will be General American's after tax rate of return on surplus (i.e., return sought on invested capital), which is 10% to 12%. Accordingly, Applicants assert that the after tax rate of return on surplus is appropriate for use in this present value calculation.

11. In determining the after tax rate of return, General American considered a number of factors, including market interest rates, anticipated long-term growth rate, acceptable risk levels, inflation, and available information about the rates of return obtained by other mutual life insurance companies. General American represents these are appropriate factors to consider.

12. General American first projects its future growth rate based on sales projections, current interest rates, inflation rate, and the amount of surplus that it can provide to support such growth. General American then uses these factors, giving market interest rates, acceptable risk level, and inflation rate significantly more weight, to set a rate of return on surplus equal to or in excess of the anticipated rate of growth. General American seeks to maintain a ratio of surplus to assets that it establishes based on its judgment of the risks represented by various components of its assets and liabilities. Maintaining the ratio of surplus to assets is critical to General American maintaining a competitive rating from various rating agencies and to offering competitively priced products. Consequently, General American's surplus must grow at least at the same rate as its assets.

13. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, comes to $160.40. The effect of Section 848 on the Contracts and Other Contracts is therefore an increased tax burden with a present value of $95.63 for each $10,000 of net premiums received (i.e., $256.03 minus $160.40).

14. General American does not incur incremental federal income tax when it passes on state premium taxes to Contract Owners because state premium taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing General American's federal income taxes. To compensate General American fully for the impact of Section 848, General American must impose an additional charge to make it whole not only for the $95.63 additional tax burden attributable to Section 848, but also for the tax on the additional $95.63 itself. This federal tax can be determined by dividing $95.63 by the complement of 35% federal corporate income tax rate (i.e., 65%), resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

15. Based on its prior experience, General American reasonably expects to take almost all future deductions. It is General American's judgment that a 1.25% charge would reimburse it for its increased federal income tax liabilities under Section 848. Applicants represent that the 1.25 charge will be reasonably related to General American's increased federal income tax burden under Section 848. This representation takes into account the benefit to General American of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to General American's cost of capital) in computing the future deductions resulting from such amortization. To the extent that General American's actual cost of capital exceeds an annual rate of 10%, the calculation of this increased tax burden will continue to be reasonable over time.

16. General American believes that the 1.25% charge would have to be increased if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period. Accordingly, the Contract, Future Contracts and endorsements to the Existing Contracts offered after issuance of an order in this matter will or may reserve the right to increase, or decrease, the 1.25% charge in response to such future changes or interpretations that increase or decrease its tax burden. Any increase of the charge above 1.25% would require additional exemptive relief from the Commission under the 1940 Act.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from premium payments of a DAC Tax Charge in an amount that is reasonable in relation to General American's increased federal tax burden based on receipt of premiums under the Contract. The DAC Tax Charge also may be included in Future Contracts and may be added to Existing Contracts issued after receipt of the order requested herein. Applicants also request exemptions from Rule 6e–3(T)(c)(4)(v) under the 1940 Act to permit the proposed DAC Tax Charge to be treated as other than ''sales load,'' as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions of that Section found in Rule 6e–3(T).

2. Applicants also request an order under Section 6(c) exempting them and any Future Accounts from Section 27(e) of the 1940 Act and Rules 27e–1 and 6e–3(T)(b)(13)(vii) thereunder to the extent necessary to eliminate the requirement of written notice to owners of the Contract or Future Contracts concerning certain withdrawal and refund rights.

3. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act].''

A. DAC Tax Charge

1. *Section 27(c)(2).* Section 27(c)(2) prohibits any deduction from premium payments made under periodic payment plan certificates other than a deduction for ''sales load.'' ''Sales load'' is defined under Section 2(a)(35), in relevant part, as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to 9% of total payments.

2. *Rule 6e–3(T)(b).* Certain provisions of Rule 6e–3(T) provide exemptive relief from Section 27(c)(2) if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule. Rule 6e–3(T)(b)(13)(iii) provides exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including ''[t]he deduction of premium or other taxes imposed by any State or other governmental entity.''

3. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii)(E) of Rule 63–3(T), but that the language of paragraph (c)(4) of the Rule appears to require that deductions for federal tax obligations from receipt of premium payments be treated as ''sales load.'' Applicants state that they request relief from Section 27(c)(2) only to preclude the possibility that a charge related to the increased burden resulting from Section 848 is not covered by the exemption provided by Rule 6e–3(T)(b)(13)(iii)(E). Applicants submit that the public policy reasons underlying subparagraph (b)(13)(iii)(E) provide support for the exemption requested.

4. *Rule 6e–3(T)(c)(4).* Paragraph (b)(1), together with paragraph (c)(4), of Rule 6e–3(T) provide an exemption from the Section 2(a)(35) definition of ''sales load'' by substituting a new definition to be used for purposes of the Rule.

Rule 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any purchase payments made during that period over certain itemized charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rule, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of ''sales load.'' Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load or otherwise be subject to the sales load limits of Rule 6e–3(T). Moreover, Applicants assert that nothing in the administrative history of Rule 6e–3(T) suggests that the Commission intended to treat tax charges as sales load.

5. Applicants argue that the exemption is necessary in order for Account 11 and any Future Account to rely on subparagraph (c)(13)(i), which provides critical exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Applicants note that issuers and their affiliates may only rely, however, on subparagraph (b)(13)(i) if they meet its alternate limits that apply to sales load as defined in paragraph (c)(4). Applicants represent that they and Future Accounts could not meet these limits if the DAC Tax charge is included in sales load.

6. Applicants assert that the public policy that underlies paragraph (b)(13) of Rule 6e–3(T), and particularly subparagraph (b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants argue that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

7. Applicants suggest that the source for the definition of ''sales load'' found in paragraph (c)(4) of Rule 6e–3(T) supports this analysis. In adopting paragraph (c)(4) of the Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of the Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, the percentage limits in subparagraph (b)(13)(i) of Rule 6e–3(T) depend on paragraph (c)(4), which does not depart, in principle, from Section 2(a)(35).

8. Applicants further suggest that the exclusion from the definition of ''sales load'' under Section 2(a)(35) of deductions from premiums for ''issue taxes'' indicates that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rule 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. By extension, it is equally consistent to exclude such charges from Rule 6e–3(T)(c)(4) definition of sales load. Additionally, the exclusion of administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' also suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to sales or promotional activities. The proposed deductions will be used to compensate General American for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, the language in Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies and provisions of the 1940 Act.

9. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rule 6e–3(T) from the definition of ''sales load'' is limited to state premium taxes. When Rule 6e–3(T) was adopted and later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

10. *Applicant's Conditions for DAC Tax Relief:* Applicants agree to the following conditions:

(a) General American will monitor the reasonableness of the 1.25% DAC Tax Charge;

(b) The registration statement for any variable life insurance contract under which the 1.25% charge is deducted will include: (1) disclosure of the charge; (2) disclosure explaining the purpose of the charge; and (3) a statement that the charge is reasonable in relation to General American's increased federal tax burden under Section 848 of the Code; and

(c) General American also will include as an exhibit to the registration statement for any variable life insurance contract under which the 1.25% charge is deducted an actuarial opinion as to: (1) the reasonableness of the charge in relation to General American's increased federal tax burden under Section 848 of the Code; (2) the reasonableness of the after-tax rate of return that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by General American in determining such after-tax rate of return.

11. *Request for Class Relief.* Applicants also request exemptions to deduct the DAC Tax Charge for any Future Account established by General American to support Future Contracts, as defined in Rule 6e–3(T)(c)(1). Applicants assert that granting exemptive relief to deduct the 1.25% DAC Tax Charge from the assets of any Future Account established in connection with the issuance of Future Contracts would promote competitiveness in the variable life insurance market by eliminating the need for General American to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Applicants further represent that the delay and expense involved in having repeatedly to seek exemptive relief would impair General American's ability effectively to take advantage of business opportunities as they arise. Further, any additional requests for exemptive relief for such Future Accounts would present no issues under the 1940 Act that have not already been addressed in this application. Without the requested relief, General American would have to

obtain exemptions for each Future Account with respect to the same issues addressed in this application. Thus, investors would receive no benefit or additional protection and might be disadvantaged by General American's increased overhead expenses.

12. Applicants submit that, for the reasons stated above, it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to deduct a DAC Tax Charge and to exclude it from sales load.

B. Waiver of Notice of Withdrawal and Refund Rights

1. Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d), written notification of the right to surrender and receive a refund of the excess sales load. Section 27(d) requires the refund of any excess sales load paid during the first eighteen months after issuance of a periodic payment plan certificate. Rule 27e–2 establishes the requirements for the notice mandated by Section 27(e) and prescribes Form N–271–1 for that purpose. Rule 6e–3(T)(b)(13) modifies the requirements of Section 27 and the rules thereunder. Rule 6e–3(T)(b)(13)(vii) adopts Form N–27–1, originally intended for application to contractual plans, and requires it to be sent to a contract owner upon issuance of the contract and again during any lapse period in the first two contract years. The Form requires statements of (1) the contract owner's right to a refund of the excess sales load for a surrender during the first two contract years, (2) the date that the right expires, and (3) the circumstances in which the right may not apply upon lapse. Thus, Section 27(e) of the 1940 Act and Rules 27e–1 and 6e–3(T)(b)(13)(vii), in effect, require a notice of right of withdrawal and refund, on Form N–271–1, to be provided to owners of the Contracts or Future Contracts (''Contract Owners'') entitled to a refund of sales load in excess of the limits stated in paragraph (b)(13)(v)(A) of Rule 6e–3(T).

2. Applicants note that the CDSC may be deducted upon surrender, face amount reduction or lapse of the Contract, which does not assess any other sales charges. The CDSC does not, during the first two Contract years, or during the first two Contract years after the increase in face amount, exceed the limits described under paragraph (b)(13)(v)(A) of Rule 6e–3(T), beyond which sales charges are characterized as ''excess sales charges.'' Thus, Applicants assert that no ''excess sales charge'' is ever paid by a Contract Owner surrendering, reducing the face amount, or lapsing in the first two Contract years, or during the first two Contract years after the increase in face amount. Moreover, Applicants state that the Contract does not impose an excess sales load upon lapse, thus negating the value of a notice being sent during the lapse period.

3. Rule 27e–1, pursuant to which Form N–271–1 was first prescribed, specifies in paragraph (e) that a notice need be mailed when there is otherwise no entitlement to receive any refund of sales charges. Moreover, Rule 27e–1 and Rule 6e–2, from which Rule 6e–3(T) was derived, were adopted in the context of front-end loaded products only and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales charges.

4. Applicants submit that requiring of a Form N–271–1 could confuse Contract Owners or encourage them to surrender during the first two Contract years, or surrender or decrease face amount during the first two Contract years following a face amount increase, when it may not be in their best interests to do so. A Contract Owner with a declining contingent deferred sales load, unlike a contract with a front-end sales charge, does not foreclose the opportunity, at the end of the first two Contract years, to receive a refund of monies spent. Such a Contract Owner has not paid any excess sales charge and, as the deferred sales charge declines over the life of the Contract, may never pay it. Applicants thus assert that encouraging a surrender during the first two Contract years could cost such a Contract owner more in total sales load, relative to total premium payments, than would otherwise be paid if the Contract were held for the long-term period originally intended.

5. Applicants submit that the absence of excess sales charge and, therefore, the absence of an obligation to assure repayment of that amount, do not create a right in a Contract owner which Form N–271–1 was designed to highlight. In the absence of this right, the notification contemplated by Form N–271–1 is an unnecessary and counter-productive administrative burden the cost of which appears unjustified. Any other purpose potentially served by Form N–271–1 would already be addressed by the required Form N–271–2 Notice of Withdrawal Right, generally describing the charges associated with the Contract, and prospectus disclosure detailing the sales load design. Neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1, contemplated the applicability of Form N–271–1 in the context of a contract with a declining contingent deferred sales load.

C. Applicants' Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the exemptions requested under Section 6(c) of the 1940 Act form: (1) Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to permit General America to deduct up to 1.25% from premium payments as a DAC Tax Charge, and (2) under Section 27(e) of the 1940 Act and Rules 27e–1 and 6e–3(T)(b)(13)(vii) thereunder to permit the elimination of the requirement of written notice to owners of the Contract or Future Contracts concerning certain withdrawal and refund rights, are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10132 Filed 4–24–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, May 18, 1995, from 8:30 a.m. to 12:30 p.m. in Room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW, in Washington, DC. This will be the twenty-first meeting of the COMSTAC. In addition to reports from the respective COMSTAC Working Groups, the meeting will provide a legislative update on Congressional activities involving commercial space transportation; a briefing on the status of the insurance industry; an activities report from the Office of Commercial Space Transportation; and other related topics. This meeting is open to the public; however, space may be limited. Additional information may be obtained by contacting Linda H. Strine at (202) 366–5770.

Dated: April 19, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95–10114 Filed 4–24–95; 8:45 am]

BILLING CODE 4910–62–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Opportunity to Submit Written Comments on WTO Members' Antidumping and Countervailing Duty Legislation and Regulations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to submit written comments to the Office of the United States Trade Representative on other World Trade Organization (WTO) Members' antidumping and countervailing duty legislation and regulations.

SUMMARY: The WTO Committee on Antidumping Practices and the WTO Committee on Subsidies and Countervailing Measures will hold meetings the week of June 12, 1995 to begin reviewing Members' notifications of the full and integrated texts of their antidumping and countervailing duty laws and regulations. USTR invites interested persons to provide comments on other WTO Members' notifications to assist USTR in preparing for these meetings. USTR is particularly interested in receiving comments that are illustrated with examples taken from application of other Members' actual antidumping and countervailing duty laws and regulations. The notifications are available for reading and photocopying in the Public Reading Room at USTR and in Room B–099 of the Central Records Unit at the Department of Commerce.

DATES: Interested persons are invited to provide written comments to USTR on the following WTO Members' notifications by May 15, 1995: Korea, Australia, Venezuela, Mexico, Chile, New Zealand, Canada, Argentina, Brazil, India, and the European Union. Comments on other WTO Members' notifications should be provided by July 1, 1995.

FORMAT AND NUMBER OF COPIES: Interested persons should submit the original and two copies of their typewritten comments on other WTO Members' notifications to Sybia Harrison, WTO Members' AD/CFD Notifications, Office of the USTR, Room 223, 600 17th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Questions concerning USTR's Public Reading Room and the availability of specific Members' notifications should be directed to: Brenda Webb, Information Services Assistant (202) 395–6186. Questions concerning Commerce's Central Records Unit and the availability of specific Members' notifications should be directed to: Andrew Lee Beller, Director of Central Records (202) 482–1248. Other inquiries should be directed to Joanna McIntosh, Assistant General Counsel, (202) 395–7203.

SUPPLEMENTARY INFORMATION: Article 18.5 of the WTO Agreement on Implementation of Article VI and Article 32.6 of the WTO Agreement on Subsidies and Countervailing Measures require Members to inform the relevant Committee of any changes in their laws, regulations, or administration thereof, relevant to the Agreements. The Antidumping and Subsidies Committees agreed at their inaugural meetings in February 1995 that WTO Members should notify the full and integrated texts of their antidumping and countervailing duty laws and regulations to the relevant Committees by March 15, 1995.

The Committees further decided to begin reviewing the following twelve notifications at meetings to be held the week of June 12, 1995: Korea, Australia, Venezuela, Mexico, Chile, United States, New Zealand, Canada, Argentina, Brazil, India, and the European Union. Other Members' notifications will be reviewed subsequently.

The Committees have requested Members to submit written questions concerning the notifications prior to the respective meetings. Answers to the questions will be given orally at the meetings and subsequently in writing. The review process offers a meaningful opportunity to verify other Members' compliance with the Antidumping and Subsidies Agreements and to provide suggestions as to possible modifications to Members' laws, regulations or the administration of those provisions.

Irving Williamson,

Deputy General Counsel.

[FR Doc. 95–10139 Filed 4–24–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 79
Tuesday, April 25, 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).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: April 26, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 629th Meeting—April 26, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 10661–004, Indiana Michigan Power Company
CAH–2.
Project No. 1473–010, Montana Power Company and Granite County, Montana
CAH–3.
Omitted
CAH–4.
Omitted
CAH–5.
Project No. 10395–001, City of Augusta, Kentucky
Project No. 10646–000, City of Vanceburg, Kentucky
Project No. 11053–000, City of Hamilton, Ohio
CAH–6.
Project Nos. 2570–018, 019 and 020, Ohio Power Company
CAH–7.
Project No. 2506–002, Mead Corporation, Publishing
Paper Division

Consent Agenda—Electric

CAE–1.
Docket No. ER95–625–000, Cincinnati Gas & Electric Company
CAE–2.
Docket No. ER95–651–000, United Illuminating Company
CAE–3.
Omitted
CAE–4.
Docket No. ER95–626–000, PSI Energy, Inc.
CAE–5.
Docket Nos. QF93–29–003 and EL95–20–000, Auburndale Power Partners, Limited Partnership
CAE–6.
Docket No. ER95–408–001, Gulf States Utilities Company
CAE–7.
Docket Nos. EL91–32–003 and EL91–34–003, Power Authority of the State of New York and Municipal Electric Utilities Association of New York State v. Long Island Lighting Company
CAE–8.
Omitted
CAE–9.
Docket No. ER94–1685–001, Citizens Lehman Power Sales
CAE–10.
Docket No. ER95–181–001, Florida Power & Light Company
CAE–11.
Docket No. ER94–1691–002, AIG Trading Corporation
CAE–12.
Docket No. ER95–393–001, CLP Hartford Sales, L.L.C.
CAE–13.
Docket Nos. ER95–371–002 and ER93–777–004, Commonwealth Edison Company
CAE–14.
Docket No. RM92–12–001, Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978
CAE–15.
Docket No. ER79–97–016, Century Power Corporation
CAE–16.
Docket Nos. ER91–569–002, 004, ER92–761–001 and ER93–250–001, Entergy Services, Inc.
CAE–17.
Docket No. EG95–32–000, Coastal Technology Salvador, S.A. de C.V.
CAE–18.
Docket No. EG95–33–000, Coastal Nejapa Ltd.
CAE–19.
Docket No. EG95–35–000, Nejapa Power Company
CAE–20.
Docket No. EG95–36–000, 1994 El Salvador Power Trust, Acting Through its Trustee, State Street Bank and Trust Company
CAE–21.
Docket No. EG95–34–000, North American Energy Services Company
CAE–22.
Docket No. EL95–21–000, Board of Public Utilities, City of McPherson, Kansas
CAE–23.
Docket No. ER84–560–036, Union Electric Company
CAE–24.
Docket No. EL93–19–000, San Diego Gas & Electric v. Tucson Electric Power Company and Century Power Corporation
Docket No. FA90–34–001, Tucson Electric Power Company
CAE–25.
Docket No. PL95–1–001, Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates
CAE–26.
Docket Nos. EL95–7–000 and QF91–138–002, LG&E- Westmoreland Rensselaer

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP95–206–000, Tennessee Gas Pipeline Company
CAG–2.
Docket Nos. RP95–215–000, RP94–375–000, 001 and RP94–125–006, Texas Gas Transmission Corporation
CAG–3.
Docket No. RP95–216–000, Tennessee Gas Pipeline Company
CAG–4.
Omitted
CAG–5.
Docket No. RP95–219–000, Texas Eastern Transmission Corporation
CAG–6.
Docket No. RP95–222–000, CNG Transmission Corporation
CAG–7.
Docket No. RP95–224–000, ANR Pipeline Company
CAG–8.
Omitted
CAG–9.
Docket No. RP95–228–000, Carnegie Interstate Pipeline Company
Docket No. RP93–186–003, Carnegie Natural Gas Company
CAG–10.
Omitted
CAG–11.
Omitted
CAG–12.
Docket Nos. RP95–217–000 and RP95–220–000, Trunkline Gas Company
CAG–13.
Docket No. RP95–221–000, Northern Natural Gas Company
CAG–14.
Docket No. RP95–223–000, Williston Basin Interstate Pipeline Company
CAG–15.
Docket No. RP95–226–000, Mississippi River Transmission Corporation
CAG–16.
Omitted
CAG–17.
Docket No. TM95–4–28–000, Panhandle Eastern Pipe Line Company

CAG–18.
Docket No. RP95–41–000, Natural Gas Pipeline Company of America
CAG–19.
Docket No. RP89–161–030, ANR Pipeline Company
CAG–20.
Docket No. RP94–365–000, Williams Natural Gas Company
CAG–21.
Docket No. GT95–22–000, Panhandle Eastern Pipe Line Company
CAG–22.
Omitted
CAG–23.
Docket No. RP95–3–002, Williams Natural Gas Company
CAG–24.
Docket No. RP95–75–000, K N Interstate Gas Transmission Company
CAG–25.
Docket No. RP95–99–000, Koch Gateway Pipeline Company
CAG–26.
Docket No. RP95–225–000, Questar Pipeline Company
CAG–27.
Omitted
CAG–28.
Docket Nos. RP95–152–001, 002, RP94–343–000 and 006, NorAm Gas Transmission Company
CAG–29.
Docket No. RP95–141–001, Pacific Gas Transmission Company
CAG–30.
Docket No. RP95–149–001, ANR Pipeline Company
CAG–31.
Docket No. RP95–15–005, Texas Eastern Transmission Corporation
CAG–32.
Docket Nos. RP92–137–036 and RP93–136–005, Transcontinental Gas Pipe Line Corporation
CAG–33.
Docket Nos. RP92–149–005 and 004, Transcontinental Gas Pipe Line Corporation
CAG–34.
Docket Nos. RP94–407–001 and 002, Mississippi River Transmission Corporation
CAG–35.
Docket Nos. RP85–203–016 and RP88–203–013, Panhandle Eastern Pipe Line Company
Docket No. RP85–170–011, Texas Eastern Transmission Corporation
CAG–36.
Omitted
CAG–37.
Omitted
CAG–38.
Docket Nos. RP94–105–005 and 006 (Phases I and II), Ozark Gas Transmission System
CAG–39.
Omitted
CAG–40.
Docket No. IN92–2–000 (Phase I), Amoco Production Company and Oryx Energy Company
Docket No. IN83–2–000, Various Producer-Owned Natural Gas Processing Plants
Docket No. IN92–1–000, Producers Selling Gas Processed at the Laverne and/or Moorehead Plants
CAG–41.
Docket No. MG88–30–002, Great Lakes Gas Transmission Company
CAG–42.
Docket No. MG88–51–008, Transcontinental Gas Pipe Line Corporation
CAG–43.
Docket No. MG95–2–000, Columbia Gas Transmission Corporation
Docket No. MG95–3–000, Columbia Gulf Transmission Company
CAG–44.
Docket No. MG88–11–003, Questar Pipeline Company
Docket No. MG91–5–002, Overthrust Pipeline Company
CAG–45.
Docket No. CP93–258–005, Mojave Pipeline Company
CAG–46.
Docket Nos. CP93–505–005, CP93–506–005 and RP95–162–001, Panhandle Eastern Pipe Line Company
CAG–47.
Docket No. CP94–679–001, Great Lakes Gas Transmission Limited Partnership
CAG–48.
Docket No. CP93–281–003, Paiute Pipeline Company
CAG–49.
Docket Nos. CP94–6–002 and 000, Texas Eastern Transmission Corporation
Docket No. CP94–89–001 and 000, CNG Transmission Corporation
CAG–50.
Docket No. CP94–161–002, Avoca Natural Gas Storage
CAG–51.
Docket No. CP94–342–000, Crossroads Pipeline Company
CAG–52.
Docket No. CP95–187–000, K N Interstate Gas Transmission Company
CAG–53.
Omitted
CAG–54.
Docket Nos. CP94–682–000 and 001, Southern Natural Gas Company
CAG–55.
Omitted
CAG–56.
Docket Nos. CP95–61–000 and CP95–62–000, Columbia Gas Transmission Corporation
CAG–57.
Docket No. RP92–133–004, Gas Research Institute
CAG–58.
Docket No. CP93–500–002, Natural Gas Pipeline Company of America
CAG–59.
Docket No. CP95–116–001, Natural Gas Pipeline Company of America v. Northern Border Pipeline Company
CAG–60.
Docket No. RP95–80–001, National Fuel Gas Supply Corporation
CAG–61.
Docket No. RP94–43–000, ANR Pipeline Company
CAG–62.
Docket No. RP95–124–001, Gas Research Institute
CAG–63.
Docket No. RP94–43–011, ANR Pipeline Company
CAG–64.
Docket Nos. RP95–58–001, RP94–43–008 and 010, ANR Pipeline Company
CAG–65.
Docket No. IS95–25–000, Plantation Pipe Line Company
CAG–66.
Docket No. CP95–12–000, Williams Gas Processing-Kansas Hugoton Company
Docket No. CP95–11–000, Williams Natural Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Omitted
E–2.
Omitted
E–3.
Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Omitted

Dated: April 19, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–10216 Filed 4–21–95; 4:00 pm]

BILLING CODE 6717–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 24, May 1, 8, and 15, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 24

Tuesday, April 25

2:00 p.m.
Briefing on NRC Status of High-Level Waste Management Program (Public Meeting)
(Contact: Joseph Holonich, 301–415–6643)

Wednesday, April 26

10:00 a.m.
Briefing on Proposed Rule on Safety Equipment Reliability Data (Public Meeting)
(Contact: Charles Rossi, 301–415–7499)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Babcock and Wilcox Company (Pennsylvania Nuclear Service

Operations, Parks Township, PA), Initial Decision (License Renewal), LBP–95–1, Docket No. 70–364–ML–Ren (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Thursday, April 27

10:00 a.m.
Briefing by IG and Staff Concerning Audit of HLW Licensing Support System (LSS) (Public Meeting)
(Contact: John Hoyle, 301–415–1968)

Week of May 1—Tentative

Wednesday, May 3

2:00 p.m.
Briefing on NRR Licensing Actions Program (Public Meeting)
(Contact: Roy Zimmerman, 301–415–1284)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 8—Tentative

Thursday, May 11

10:00 a.m.
Briefing on Business Process Reengineering for Materials Licensing Area (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)
11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Friday, May 12

10:00 a.m.
Briefing by DOE on HLW Licensing Support System (LSS) (Public Meeting)
2:00 p.m.
Briefing on Site Decommissioning Management Plan (SDMP) Program and Policy Issues (Public Meeting)
(Contact: Mike Weber, 301–415–7298)

Week of May 15—Tentative

There are no meetings scheduled for the week of May 15.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. if you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: April 21, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–10260 Filed 4–21–95; 3:10 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 79
Tuesday, April 25, 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

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 95-003-1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

Correction

In rule document 95–8616 beginning on page 17631 in the issue of Friday, April 7, 1995, make the following correction:

§354.2 [Corrected]

On page 17632, in §354.2, in the third column of the table, the second entry, ''Astoria'' should appear under the ''Served from'' column.

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Meeting

Correction

In notice document 95–8633 beginning on page 17780, in the issue of Friday, April 7, 1995, make the following correction:

On page 17781, in the first column, in paragraph 12., in the first line, ''Transitional'' should read ''Transnational''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5179-8]

Notice of Proposed Administrative Settlement; Lorentz Barrel and Drum Superfund Site

Correction

In notice document 95–7592 beginning on page 16135, in the issue of Wednesday, March 29, 1995, make the following corrections:

1.On page 16135, in the second column, under **SUMMARY:**, in the first full paragraph, in the third line, ''part'' should read ''past''.

2.On page 16136, in the 1st column, under **SUPPLEMENTARY INFORMATION:**, in the 20th line from the top, ''Van'' should read ''Varn''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-1430-01; IDI-31261]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Idaho

Correction

In notice document 95–8019 beginning on page 16658 in the issue of Friday, March 31, 1995, make the following correction:

On page 16659, in the first column, in the first line, ''lots 2 to 4'' should read ''lots 1 to 4''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35571; File No. SR-NYSE-95-01]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Domestic Listing Standards

Correction

In notice document 95–8996 beginning on page 18649, in the issue of Wednesday, April 12, 1995, make the following correction:

On page 18653, in the first column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,
Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35551; File No. SR-PSE-95-08]

Self-Regulatory Organizations; Notice of Filing Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Rules on Short Interest Reporting

Correction

In notice document 95–8666 beginning on page 18160, in the issue of Monday, April 10, 1995, make the following correction:

On page 18161, in the third column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,
Deputy Secretary.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-97-AD; Amendment 39-9157; AD 95-04-05]

Airworthiness Directives; Bombardier (Formerly Canadair) Model CL-600-2B19 (Regional Jet Series 100) Series Airplanes

Correction

In rule document 95–4256 beginning on page 12666, in the issue of Wednesday, March 8, 1995, make the following corrections:

§39.13 [Corrected]

1.On page 12667, in the third column, in §39.13 (k), in the first full paragraph, in the first line, before the word ''This'' insert ''paragraph designation (k)''.

2.On the same page, in the same column, in the same paragraph, in the second line, ''April 17, 1995.'' should read ''April 7, 1995.''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds, American Reliable Insurance Company

Correction

In notice document 95–8496 appearing on page 17609 in the issue of Thursday, April 6, 1995 make the following correction:

On page 17609, in the second column, in the first full paragraph, in the eighth line, ''HH'' should read ''NH''.

BILLING CODE 1505–01–D

federal register

Tuesday
April 25, 1995

Part II

Department of Transportation

Coast Guard

33 CFR Part 187

Establishment of Vessel Identification System; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 187

[CGD 89–050]

RIN 2115–AD35

Vessel Identification System

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Coast Guard is establishing a vessel identification system (VIS), as required by statute, which includes guidelines for State vessel titling systems, procedures for certifying compliance with those guidelines, and rules for participation in this system for undocumented vessels. VIS, in conjunction with current Coast Guard vessel documentation information, will provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels and deter vessel theft. A mortgage that covers the whole of an undocumented vessel and is perfected in a State that both participates in VIS and holds certification of compliance with guidelines for State vessel titling systems will be deemed to have preferred mortgage status.

DATES: This rule is effective on April 24, 1996. Comments must be received on or before July 24, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406), (CGD 89–050), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR Keith Cameron, Office of Marine Safety, Security and Environmental Protection, Information Management Division (G–MIM), (202) 267–0385.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 89–050) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

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

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

Drafting Information

The principal persons involved in drafting this document are CDR Keith Cameron, Project Manager, Office of Marine Safety, Security and Environmental Protection and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On October 5, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Vessel Identification System in the **Federal Register** (58 FR 51920). The Coast Guard received 27 letters commenting on the NPRM. No public hearing was requested, and none was held.

Background and Purpose

The Secretary of Transportation is required to establish VIS; to prescribe the manner and form for participating States to make information available to VIS; to establish guidelines for State vessel titling systems; and to establish procedures for certifying compliance with those guidelines (46 U.S.C. chapters 125, 131 & 313). The Secretary has delegated to the Commandant, U.S. Coast Guard, the authority to implement VIS. State participation in VIS is entirely voluntary, however, in order to participate, States must comply with certain requirements to ensure the integrity and uniformity of the information provided to VIS.

This interim final rule establishes the minimum requirements for States electing to participate in VIS. VIS will comprise a nationwide information system for identifying recreational vessels that are either numbered in accordance with 46 U.S.C. 123 or titled under the laws of a State. VIS will include information identifying vessels and vessel owners, and information to assist law enforcement officials in the investigation of stolen vessels. Most of the information to be included in VIS is already collected by States that number vessels in accordance with 33 CFR 174.17. This and other information collected by the States will be automatically accessed by VIS, resulting in a central, nationwide pool of vessel information, while minimizing the burden of participating States. Once the VIS requirements are effective, the Coast Guard will begin to work with participating States to coordinate VIS access.

This interim final rule also prescribes guidelines for State vessel titling systems and the procedures for obtaining certification of compliance with those guidelines. Under 46 U.S.C. 31322(d), perfected mortgages covering the whole of a vessel titled in a State that both participates in VIS and has a vessel titling system that has been certified as meeting the titling guidelines issued by this interim final rule will be deemed to have preferred mortgage status. Compliance with the State titling guidelines and requests for certification of that compliance is entirely voluntary. However, preferred mortgage status under 46 U.S.C. 31321(d) is conditioned upon both participation in VIS and certification of compliance with the State titling guidelines issued by this interim final rule.

This action is being published as an interim final rule to allow for public comment on a provision, § 187.315, that has been added to the State vessel titling requirements since publication of the NPRM. Also, this action is being published with an effective date of one year from today's date. This effective date will allow States affected by a statutory amendment to 46 U.S.C. chapter 121, which becomes effective one year from the effective date of the State titling guidelines issued as a part of this interim final rule, time to review, and if necessary, amend their vessel titling requirements. These issues are addressed in greater detail in the discussion of § 187.315 later in this preamble.

It is not anticipated that VIS will be operational before the effective date of this interim final rule. Publishing the

VIS requirements now, however, will provide States with the information necessary to prepare for participation in the voluntary VIS system.

Discussion of Comments and Changes

All of the comments received were considered in the development of this interim final rule. The issues raised by the comments received, and the sections which have been revised or added since publication of the NPRM, are discussed below. Some sections were revised or reorganized for clarity.

Subpart A—General

§ 187.1 Applicability.

VIS will cover vessels that are numbered or titled under the laws of a State. Information pertaining to vessels which are documented by the Coast Guard will continue to be collected under the current regulations. Many of the comments suggested that documented vessels be covered by the VIS requirements. After analyzing the merits of applying the VIS requirements to documented vessels, the Coast Guard determined that it will be more efficient to maintain the current Coast Guard data base on documented vessels, and allow increased access to that information through VIS. Therefore, documented vessels will not be covered by the vessel identification system requirements of this interim final rule. Users of VIS will, however, have access to a nationwide pool of information on recreational vessels, whether documented or undocumented, because the planned enhancement of the documentation data base will allow access to the Coast Guard's data base on documented vessels through VIS. The Coast Guard currently maintains an information system on over 200,000 vessels documented under 46 U.S.C. chapter 121. Maintaining this documentation system, while allowing access to the data base through VIS, satisfies the statutory goal of establishing a nationwide vessel data base and is more efficient than discontinuing the existing documentation record keeping system.

One comment suggested that the VIS final rule specifically exempt barges from VIS. The comment noted that the Abandoned Barge Act of 1992 amended 46 U.S.C. 12301 to require the numbering of undocumented barges greater than 100 gross tons. The Coast Guard published a notice on October 18, 1994, seeking comments on the development of a numbering system for barges (59 FR 52646). Currently, barges are not numbered, and the Coast Guard is in the early stages of developing a mandatory numbering system. Because this interim final rule applies only to vessels that are numbered or titled under the laws of a State, barges are not currently covered by VIS. As the Coast Guard's efforts to establish a barge numbering system continue, the Coast Guard will examine whether a specific exclusion of barges from VIS is appropriate. The Coast Guard will propose future amendments to VIS, if necessary.

§ 187.3 Definitions.

One comment suggested that the Coast Guard add the definition of ''titled vessel'' to § 187.3 and another comment suggested adding the definition of ''perfection''. Under § 187.303, the Coast Guard requires that participating States define most of the terms included in § 187.3 in their titling systems substantially as those terms are defined by the Coast Guard. Therefore, in order to allow the States the most flexibility possible in establishing approved titling systems, the Coast Guard has attempted to minimize the number of required definitions. The Coast Guard agrees that a definition of the term ''titled vessel'' would be helpful, and a definition of that term has been added. However, the term ''perfection'' will be left to the States to define in accordance with their own titling systems. The definition of the term ''person'' has been revised to be consistent with the definition provided in the regulations regarding State numbering system requirements at 33 CFR 173.3(e). This revision is intended to result in no substantive change.

§ 187.5 Vessel identifier.

Many comments objected to the use of ''VIN'' as an acronym for ''Vessel Identification Number.'' The comments suggested that this acronym would confuse law enforcement personnel who are far more familiar with VIN meaning Vehicle Identification Number. The Coast Guard agrees with these comments and will not use the acronym VIN in the VIS regulations. The title of the section has been revised accordingly.

Some of the comments revealed a misunderstanding of this provision by objecting to the establishment of a new number. VIS will not establish a new numbering system for vessels. For purposes of identifying a vessel within VIS, the number to be used will be the hull identification number (HIN) assigned to an undocumented vessel in accordance with Subpart C of part 181. Several comments suggested that documented vessels be identified within VIS by their HIN. However, as discussed above, the Coast Guard is maintaining its existing data base on documented vessels which uses the Coast Guard Official Number to identify vessels within the current documentation system. Therefore, it will be necessary to keep the Coast Guard Official Number as the primary identifier for documented vessels. Information on documented vessels, such as owner name, Official Number, HIN if one has been assigned, length, and hailing port, will be available through VIS.

Several comments suggested that § 187.5(c), which requires States to assign an HIN to vessels under certain circumstances, will be problematic for States. The comments stated that the requirement leaves no room for discretion by the States to refuse to assign an HIN to a vessel which the State may believe to be stolen. These comments suggested replacing the word ''shall'' with ''may'' in paragraph (c). The Coast Guard disagrees with these comments. The HIN will be the primary identifier for all State registered or numbered vessels in the United States. Section 187.5(b) allows for the use of other identifiers, such as the number issued on a certificate of number by the issuing authority of a State, only where a vessel does not have an HIN (e.g., a vessel built prior to 1972). However, under § 187.5(c), if the ownership or State of principle use of the vessel changes, the State is required to assign an HIN to that vessel, just as States currently do under the authority of 33 CFR 181.31(c) for ''backyard boat builders''. The HIN must meet the format requirements of 33 CFR 181.25. States may impose any controls necessary to ensure HINs are assigned appropriately. Section 187.5(c) has been revised to clarify this issue for the States. The Coast Guard specifically invites comments on this revised provision from States that anticipate participating in VIS.

One comment suggested that VIS require mandatory inspection of a vessel prior to a State assigning an HIN. While the Coast Guard agrees that inspections could lessen the probability of illegal action by those attempting to obtain an HIN, it is the Coast Guard's position that the decision to implement such procedures should be left to the individual States.

Several comments suggested requiring that all documented vessels be assigned an HIN. Vessels manufactured or used primarily for noncommercial use (33 CFR 181.3), the only vessels included in VIS, are currently required to have an HIN, whether they are documented or not. However, as discussed above, to utilize the existing database of information on documented vessels, it

will be necessary to use the Coast Guard Official Number as the primary identifier for a documented vessel.

Subpart B—Information to be Collected by Participating States

§ 187.101 Information to identify a vessel owner.

Many comments objected to the provision that would have required participating States to collect information on the percentage of ownership interest of each owner for each vessel. Many comments also objected to the proposed requirement to obtain the address of each owner. These comments contended that collecting this amount of information would be overly burdensome. The Coast Guard agrees with the comments on this matter, and § 187.101 has been revised to lessen the information burden. This interim final rule requires the State to obtain the name of each owner of a vessel, but does not require States to collect any information regarding the percentages of ownership interest. Further, States are required to obtain the address of only one owner.

Several comments objected to the collection of an individual owner's Social Security Number or, where not available, date of birth and driver's license number. The comments indicated that some States do not allow the required collection of an individual's social security number, and not all individuals have a driver's license. For an effective information and identification system, there must be a method of identifying the owner of a vessel beyond the individual's name. The Coast Guard included collection of date of birth and driver's license number to assist those States that may have problems collecting Social Security Numbers. To alleviate the situation that may arise for a State where no Social Security Number or driver's license number is available, the Coast Guard will accept, in such situations only, the individual's date of birth and alternative information identifying the individual vessel owner as specified by the regulations of the State or issuing authority.

§ 187.103 Information to identify a vessel.

Most of the comments agreed with the NPRM regarding the information to be collected to identify a vessel.

One comment suggested that information regarding a vessel's type of propulsion is too detailed for inclusion in VIS. However, it is the Coast Guard's position that a vessel's type of propulsion is an excellent means, in combination with other information, to identify a vessel. Propulsion type greatly influences the value of a vessel, and this information is currently required to be collected by States with authorized numbering systems under 33 CFR 174. Therefore, inclusion of this information in VIS will cause no additional information collection requirement for these States. However, the term ''jet drive'' has been removed from the list of propulsion types to be consistent with the list of propulsion types provided in the regulations regarding State numbering system requirements at 33 CFR 174.19.

One comment argued that the final rule should not require the collection of the vessel number previously issued by an issuing authority. It is the Coast Guard's position that this is valuable information in assisting in the identification of a vessel. Also, like propulsion type, this information is required to be collected by States with authorized numbering systems under 33 CFR part 174 and represents no increased burden for these States that choose to participate.

§ 187.105 Information on titled vessels.

There was general agreement among those commenting regarding the information to be collected on titled vessels by a participating State.

One comment however, disagreed with the requirement to collect information regarding evidence of a lien or other security interest. The comment argued that the information would not be helpful. Also, the comment argued that it would be difficult to collect information regarding evidence of a lien kept in another State. Under 46 U.S.C. 12501(b)(5), VIS must include information on titled vessels indicating where evidence of a lien or other security interest may be found against the vessel in that State. Therefore, the requirement to collect information indicating where evidence of a lien may be found is retained in this interim final rule. Section 187.105(a)(3) has been revised, however, to clarify that a State must collect information regarding evidence of a lien or other security interest found in that State only.

§ 187.107 Information to assist law enforcement officials.

Several of the comments agreed with the requirements of § 187.107 as proposed. The information listed in paragraph (a) of § 187.107 (report of loss or theft, point of contact) is required to be collected, while collection of the more detailed information listed in paragraph (b) is optional. One comment suggested that the Coast Guard require the collection of the information listed in both paragraphs (a) and (b). The Coast Guard encourages participating States to collect the detailed information listed in paragraph (b). However, in the interest of putting the least possible burden on participating States while still meeting the needs of the VIS system, the Coast Guard has determined that, for now, collection of the information listed in paragraph (b) will remain optional. The Coast Guard has been working with the Criminal Justice Information Service, Department of Justice, regarding the mutual supporting roles of the National Crime Information Center (NCIC) and VIS. Because much of the information listed in paragraph (b) is contained in NCIC's Boat File, collection of that information will not be required in this rulemaking.

Subpart C—Vessel Identification System Participation Requirements

§ 187.201 Participating State requirements.

Paragraph (b) was reserved in proposed § 187.201. It has been determined that additional requirments are not necessary in that section and the paragraphs of § 187.201 have been redesignated accordingly. Also, a printing error in the wording of proposed § 187.201(a)(6) (now § 187.201(f)) has been corrected in this interim final rule.

One comment stated that the retention of previously issued certificates of number or titles would be overly burdensome. This section requires a State to collect old, no longer valid, certificates of number and title when issuing new certificates of number or titles. The State may retain or dispose of the old documents as it sees fit. Because a State is free to dispose of these invalid records, the Coast Guard does not agree that the provision is overly burdensome and the provision is retained.

Two comments suggested that compliance with the participation requirements would be easier if States are allowed to use microfiche technology. States are free to use such technology or other methods of electronic storage where appropriate. This rulemaking does not address how that information is to be stored by the States. As discussed earlier, and in § 187.201(a), Coast Guard-State Cooperative Agreements will be developed to specify the manner and form that information will be accessed by VIS.

Several comments suggested that participation in VIS be made mandatory for States. There is no statutory authority to require participation in VIS. Under 46 U.S.C. chapter 125, participation in VIS by the States is to be voluntary.

One comment suggested that the Coast Guard utilize an existing system, the American Association of Motor Vehicles Administrator's network (AAMVANET) rather than develop VIS. It was further suggested that a ''pointer system'' such as used in AAMVANET, would eliminate the need for a participating State to maintain two systems. VIS, which the Coast Guard is required by statute to create, will automatically access information collected by participating States from their databases. There will be no need for participating States to maintain two systems. The purpose of VIS is to create a national vessel database that consists of the information collected by States during numbering and titling procedures. There will be no need for a participating State to enter any vessel data twice. VIS will contain data that has been electronically copied.

One comment suggested that the project was redundant, would place a paperwork burden on the States, and would be funded by a boat tax. VIS will be the first nationwide pool of information containing the vessel and vessel owner information prescribed by this interim final rule. The framework of the system has been designed to minimize any additional burden on participating States. Almost all of the information required is currently collected by States with numbering or titling systems. There will be no need for these States to collect the information a second time. As discussed, the information will be automatically accessed or accepted by VIS. Therefore, the Coast Guard estimates that participation will not be burdensome for participating States. Finally, there is no ''boat tax'' associated with this rulemaking or the enabling legislation. Funding for the establishment of VIS is provided through the Coast Guard appropriations process.

Subpart D—Guidelines for State Vessel Titling Systems

§ 187.301 Eligibility for preferred mortgage status.

One comment suggested that preferred mortgage status would not be available as described in the NPRM. The comment questioned the ''legality of assigning 'preferred mortgage status' to instruments recorded within'' VIS. No ''instruments'' will be ''recorded'' within VIS. VIS is an information data base only. As for preferred mortgage status, 46 U.S.C. 31322(d)(1)(A) and (B) state that a mortgage perfected under State law, covering the whole of a vessel, is deemed to be a preferred mortgage if the State's titling system is certified to be in compliance with the titling guidelines issued by the Secretary, and if information on the vessel covered by the mortgage is made available to VIS. Therefore, § 187.301 remains unchanged.

§ 187.305 Application for title.

In the NPRM, § 187.305(a) proposed that States require application for a title within a specified period of time, not to exceed 90 days, after a change in ownership. Many of the comments suggested that the period of time required to apply for a title be changed to within 60 days of a change in ownership. The Coast Guard agrees with this suggestion and the provision is revised accordingly.

One comment suggested that the phrase ''first purchased'' be removed from paragraph (a). However, the Coast Guard has decided to retain this phrase in the provision to distinguish between an act requiring an initial application for title and other acts transferring the title.

Many comments disagreed with the requirement in paragraph (b) to include the amount of indebtedness covered by any security agreement pertaining to the vessel in its titling application form. The comments indicated that this requirement constituted unnecessary detail in the application process. The Coast Guard agrees that including the amount of indebtedness on a vessel in the titling application form does not serve a sufficiently useful purpose to outweigh the burden of collection of that information. Consequently, this interim final rule requires that the titling application form include an entry indicating whether there is indebtedness covered by any security agreement pertaining to the vessel, but does not require disclosure of the actual amount.

§ 187.307 Dealer and manufacturer provisions.

Many of the comments disagreed with paragraphs (a) and (b) of proposed § 187.307. Paragraph (a) proposed to require States to require dealers to report acquisition of a used numbered vessel for resale, and allow them to apply for a certificate of title. Paragraph (b) proposed to require States to require dealers to apply for a certificate of title for a used unnumbered vessel acquired for resale if the vessel is required to be titled. The comments contended that these provisions are unclear. One comment stated that paragraphs (a) and (b) are unnecessary because paragraph (a) merely allows something that States could do without such a provision, and very few vessels fit the description in paragraph (b). A different comment argued that requiring dealers to apply for title as described in paragraph (b) would cause procedural burden. The Coast Guard has revised paragraph (a) to clarify that States must require dealers to either report acquisition of used vessels for resale, or, title these vessels if State law requires such vessels to be titled. Paragraph (b) is deleted.

One comment suggested that the Coast Guard increase the length of time that dealers and manufacturers must maintain records from 3 to 10 years. Another suggested that the 3 year requirement be decreased. The Coast Guard's position is that 3 years is a sufficient amount of time to retain such records without placing an undue burden on dealers and manufacturers.

Paragraph (d) requires dealers and manufacturers to provide to the vessel owner a certificate of origin (COO), or other document, at the time of delivery of a new vessel. Several comments suggested requiring that manufacturers supply a COO only and delete the words ''or other documents''. Other comments suggested specific contents to be required in a COO. The Coast Guard, in another rulemaking, is considering requirements for COOs (Expanded Hull Identification Number and New Requirements for Certificates of Origin [CGD 92–065]; May 6, 1994; 59 FR 23651). Such requirements have not been considered as a part of this rulemaking. If future requirements for COOs are established, the VIS requirements can be amended if necessary. At the present time, there is no requirement that manufacturers issue COOs. Therefore, the language allowing for other documents such as a Builder's Certificate (CG 1261), is necessary.

§ 187.311 Transfer by operation of law.

Many comments suggested that the time limits set for accomplishing various requirements, such as applying for a certificate of title if a vessel is transferred by operation of law, as required in § 187.311, and after a transfer in ownership, as required in § 187.305(a), be consistent throughout the titling guidelines. Most comments preferred a 60 day time limit. Consequently, this interim final rule changes the time limit proposed in § 187.311 from ''not to exceed 90 days'' to ''not to exceed 60 days.''

§ 187.315 Surrender of title for purposes of documentation.

Under Federal law, a vessel must be documented by the Coast Guard if it engages in coastwise trade, foreign trade, or fisheries. A recreational vessel is not required to be documented, but

may be if it meets eligibility requirements. In the past, some lending institutions have required recreational vessel owners to obtain Coast Guard documentation so that preferred mortgages may be recorded to protect security interests. After implementation of VIS, a mortgage may acquire preferred status under 46 U.S.C. 31322(d) if it is perfected under State law for a vessel titled in a State that both participates in VIS and has a titling system certified by the Coast Guard. However, some States may not choose to participate in VIS. Therefore, the Coast Guard will continue to provide documentation services for eligible vessels, whether or not required to be documented, in order to extend the opportunity to record a preferred mortgage to those vessels.

Although it was not specifically addressed in the NPRM, a comment noted that a 1989 amendment to 46 U.S.C. 12102 would render a vessel titled in a State ineligible for documentation by the Coast Guard. This amendment will become effective on April 25, 1997, one year after the effective date of these vessel titling guidelines.

The Coast Guard wishes to emphasize that the statutory prohibition applies to all State-titled vessels, whether or not the State that issued the title participates in VIS or follows these titling guidelines. If a vessel owner has obtained a State title for purposes of convenience, the owner must choose to surrender either the State title or the Certificate of Documentation. For a vessel engaged in a trade for which documentation is required under Federal law, the owner could not choose to relinquish the Certificate of Documentation and continue to employ the vessel in trade. Three States (Iowa, New Jersey, and Vermont) currently require that a vessel receive a State title if the owner resides in the State or the vessel is principally used in the State, whether or not the vessel is documented by the Coast Guard. The Coast Guard's position is that, for vessels required to be documented under Federal law, the Federal documentation requirement preempts the State titling requirement. The vessel's Certificate of Documentation will remain valid and the State title will be void, even if a title is required by State law.

However, this preemption does not extend to recreational vessels not required to be documented by Federal law. As of the effective date of the amendment, a recreational vessel titled by a State is ineligible for documentation, and any existing Certificate of Documentation will be invalid. The vessel owner will have to either surrender the title to the issuing State authority before April 25, 1997 or surrender the Certificate of Documentation to the Coast Guard. However, an owner will be unable to surrender the title if the vessel is required to be titled under State law.

To address this issue, a new provision, entitled ''Surrender of title for purposes of documentation'', has been added to the State titling guidelines. To obtain certification of compliance with the guidelines, a State would have to deem a State-issued title invalid if a vessel owner surrenders the title to the Coast Guard for the purpose of obtaining Coast Guard documentation. The Coast Guard would return the title to the issuing State. This is intended to prevent an owner from establishing dual chains of ownership, and is consistent with current practice in most States. States generally accept surrender of title when a vessel is purchased by an out-of-State owner or an owner moves to a different State and applies for a new title and registration. A similar process is used for automobile titles.

This provision was not included in the NPRM. Therefore, the Coast Guard is promulgating this action as an interim rule to allow interested parties the opportunity to comment. The Coast Guard specifically requests comments from States on the impact of the statutory amendment and the surrender guidelines. Additionally, the Coast Guard has delayed the effective date of this rule until April 25, 1996 to allow States time to review their titling requirements and make any necessary changes.

§ 187.317 Information on a certificate of title.

Many comments argued against including the percentage of ownership interest and the address of every owner on certificates of title. These comments came from State officials who explained that often many people may own a boat and including the percentage of ownership and each address on certificates of title would be burdensome and unhelpful. Also, many married couples own boats jointly and it would serve no purpose to indicate the percentage of ownership between them. None of those States commenting on this issue currently collect this information. The Coast Guard agrees with these comments and has revised § 187.317 to require the name(s) of all current owner(s) and the address of one of the owners.

Only one comment argued against the recording of liens on certificates of title. Lien information is specifically required to be included in VIS under 46 U.S.C. 12501(b)(5). Lien information is very important in the development of the integrated boat information and titling system envisioned by Congress. Therefore, the requirement to include lien information on the certificate of title is retained in this interim final rule.

§ 187.319 Duplicate title.

Several comments suggested revisions to § 187.319. The NPRM required that the word ''duplicate'' be ''stamped'' across the face of a duplicate certificate of title. The comments noted that other means of marking the document besides ''stamping'' it should be allowed, and the marking should not be required to be ''across'' the face of the document. The Coast Guard agrees with these comments and has revised this provision to require that the word ''duplicate'' be ''clearly and permanently marked on'' the face of the document.

One comment argued that duplicate certificates of title should not be allowed. The Coast Guard does not agree with this comment. Circumstances such as loss, theft, or destruction of the document can arise and after the State has inquired into those circumstances as required by this section, a duplicate certificate of title should be available to the owner.

Another comment suggested specifying a period of time in which an owner must apply for a duplicate certificate of title. In the interest of allowing States wishing to comply with these titling guidelines as much flexibility as possible in designing titling programs for their States, the Coast Guard has decided to leave to the States the determination of the appropriate amount of time within which an owner must apply for a duplicate certificate of title.

§ 187.321 Hull identification number provisions.

Several comments suggested that the provisions of § 187.321 be optional for States complying with the guidelines. The Coast Guard does not agree with this suggestion. Section 187.321 requires States that seek certification of compliance with the guidelines to: assign an HIN to an undocumented vessel without an HIN at the time of registration upon transfer of ownership or change in State of principal operation; assign an HIN to an undocumented vessel without an HIN at the time of title application and record the HIN on the certificate of title; and prohibit the removal or alteration of an HIN without the authorization of the

Commandant. The proper assignment of an HIN to a vessel that previously did not have one, whether because of its age or because the manufacturer failed to permanently affix one, will protect the new owner and assist law enforcement efforts. Proper identification of vessels is vital to the success of the VIS and law enforcement efforts.

One of these comments also suggested that States be allowed to authorize the removal of an HIN. However, the Coast Guard has determined that this authority should remain with the Coast Guard consistent with the HIN requirements at 33 CFR 181.35.

Regulatory Evaluation

This action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this interim final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This interim final rule implements the provisions of the Act requiring the establishment of VIS, and establishes requirements for States that elect to participate in VIS, guidelines for State vessel titling systems, and procedures for certifying compliance with those guidelines. Participation in VIS and compliance with the guidelines for State vessel titling systems is entirely voluntary. Most of the information to be included in VIS is already collected by States when registering vessels within the State. Preliminary review of titling laws, regulations and administrative procedures of 28 States revealed that 21 of the State vessel titling systems would comply with most or all of the titling guidelines issued by this interim final rule. The overall impact of this rule will be the improvement of vessel and owner identification, and a potential decrease in the amount of information that is collected, other than for vessel registration, to identify a vessel or owner by State and Federal officials.

Small Entities

It is anticipated that the VIS computer system will facilitate the collection of information directly from State computer files. The impact of the rulemaking will be on States electing to participate in VIS, rather than on small entities. Most of the information to be included in VIS is already collected by States when registering vessels within the State and by States that title vessels.

Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and OMB has approved them. The section numbers are: 187.7, 187.9, 187.101, 187.103, 187.105, 187.107, 187.201, and 187.301. The corresponding OMB control number is 2115–0607.

Federalism

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

This rule is not expected to infringe upon the rights of States to regulate, or preempt existing State regulations. State participation is entirely voluntary. However, once electing to participate, a State must comply with the requirements to ensure integrity and uniformity of information in VIS. Likewise, requesting certification that a State vessel titling system complies with the guidelines is also voluntary. Such certification, for participating States, confers preferred status on mortgages covering the whole of vessels titled in that State.

However, an amendment to 46 U.S.C. 12102 prohibits vessels from being both documented and titled beginning one year after the effective date of the vessel titling guidelines. The statutory amendment applies to all vessel owners whether or not the State chooses to participate in VIS or follow the State titling guidelines. For vessels required to be documented under Federal law, the Federal documentation requirement preempts State titling requirements. This preemption does not extend to recreational vessels, for which documentation is not required by Federal law. States that require documented vessels to be titled may desire to amend their requirements regarding vessels that are required by Federal law to be documented.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule establishes a nationwide information system for identifying vessels and vessel owners, and guidelines for State vessel titling systems. This action clearly would have no environmental consequences. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 187

Marine safety, Reporting and recordkeeping requirements, Administrative practice and procedure.

For the reasons set out in the preamble, the Coast Guard amends chapter I of title 33, Code of Federal Regulations, by adding part 187 to read as follows:

PART 187—VESSEL IDENTIFICATION SYSTEM

Subpart A—General

Sec.
187.1 Applicability.
187.3 Definitions.
187.5 Vessel identifier.
187.7 Participation procedures.
187.9 Procedures for certification of compliance with guidelines for State vessel titling systems.

Subpart B—Information To Be Collected by Participating States

Sec.
187.101 Information to identify a vessel owner.
187.103 Information to identify a vessel.
187.105 Information on titled vessels.
187.107 Information to assist law enforcement officials.

Subpart C—Vessel Identification System Participation Requirements

Sec.
187.201 Participating State requirements.
187.203 Voluntary provisions for participating States.

Subpart D—Guidelines for State Vessel Titling Systems

Sec.
187.301 Eligibility for preferred mortgage status.
187.303 Definitions.
187.305 Application for title.
187.307 Dealer and manufacturer provisions.
187.309 Transfer of title.
187.311 Transfer by operation of law.

187.313 Title of another State.
187.315 Surrender of title for purposes of documentation.
187.317 Information on a certificate of title.
187.319 Duplicate title.
187.321 Hull identification number (HIN) provisions.
187.323 Perfection of security interests.
187.325 Assignments.
187.327 Satisfaction of a security interest.
187.329 Forms.
187.331 Retaining information.

Appendix A to Part 187—Participating Authorities

Appendix B to Part 187—Participating And Certified Titling Authorities

Authority: 46 U.S.C. 2103; 49 CFR 1.46.

Subpart A—General

§ 187.1 Applicability.

(a) This part establishes minimum requirements for States electing to participate in the vessel identification system (VIS) established under 46 U.S.C. chapter 125. This part also prescribes guidelines for State vessel titling systems and the procedures for obtaining certification of compliance with those guidelines for those States electing to establish titling systems to support preferred mortgages.

(b) This part applies only to vessels numbered or titled under the laws of a State. It does not apply to vessels documented under 46 U.S.C. chapter 121 and the regulations in 46 CFR parts 67 and 68.

§ 187.3 Definitions.

The following definitions apply to terms used in this part.

Certificate of Origin (COO) means a document establishing the initial chain of ownership, such as manufacturer's certificate of origin (MCO) or statement of origin (MSO), importer's certificate of origin (ICO) or statement of origin (ISO), and builder's certification (Form CG–1261; see 46 CFR part 67).

Commandant means the Commandant of the United States Coast Guard.

Dealer means any person who engages wholly or in part in the business of buying, selling, or exchanging new or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage or otherwise, and who has an established place of business for the sale, trade, and display of such vessels.

Department or *division* means the State agency designated to issue certificates of number or title, or both for vessels, and its duly authorized representatives.

Documented vessel means a vessel documented under 46 U.S.C. chapter 121.

HIN means the hull identification number assigned to an undocumented vessel in accordance with subpart C of part 181 of this subchapter.

Issuing authority means a State that has a numbering system approved by the Coast Guard or the Coast Guard where a State numbering system has not been approved.

Lienholder means a person holding a security interest.

Manufacturer means any person engaged in the business of manufacturing or importing new vessels for the purpose of sale or trade.

Owner means a person who claims lawful possession of a vessel by virtue of legal title or equitable interest in it that entitles that person to such possession.

Participating State means a State that has elected to participate in VIS and has been certified as complying with the participation requirements in subpart C of this part. Certified States participating in VIS are listed in Appendix A of this part.

Person means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity and includes a trustee, receiver, assignee, or similar representative of any of them.

Security interest means an interest that is reserved or created by an agreement and that secures payment or performance of an obligation and is valid against third parties generally.

State means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

Titled vessel means a vessel titled in accordance with the laws of a State.

Titling authority means a State whose vessel titling system has been certified by the Coast Guard as complying with the guidelines for State vessel titling systems listed in this part. Titling authorities participating in VIS are listed in Appendix B of this part.

Vessel includes every description of watercraft other than a seaplane on the water, used or capable of being used, as a means of transportation on water.

§ 187.5 Vessel identifier.

(a) The vessel identifier is the hull identification number (HIN) assigned to an undocumented vessel in accordance with subpart C of part 181 of this subchapter. The vessel identifier for a documented vessel is the official number assigned by the Coast Guard in accordance with 46 U.S.C. chapter 121.

(b) If the vessel does not have an HIN, the vessel identifier for vessels subject to the numbering requirements of parts 173 and 174 of this subchapter is the number issued on a certificate of number by the issuing authority for the State in which the vessel is principally operated.

(c) If a vessel subject to the numbering requirements of parts 173 and 174 of this subchapter is transferred to a new owner, or the vessel is required to be numbered in a new State of principal operation, or application for a title is made, a hull identification number meeting the format requirements of § 181.25 shall be assigned by the issuing authority for the State in which the vessel is principally operated in accordance with the State's established procedures if the vessel does not have a valid HIN.

§ 187.7 Participation procedures.

(a) To participate in VIS, a State official within the department must submit a written request to the Commandant (G–NAB) and certify that the State will comply with the VIS participation requirements in subpart C of this part.

(b) Appendix A of this part lists those States that have elected to participate in VIS and comply with the participation requirements prescribed in this part. A State will remain listed in Appendix A of this part as long as it continues to comply with the participation requirements in subpart C of this part.

§ 187.9 Procedures for certification of compliance with guidelines for State vessel titling systems.

(a) Under 46 U.S.C. 31322(d), a mortgage or instrument perfected under State law for a vessel titled under the law of a participating State is deemed to be a preferred mortgage if the State has been certified as complying with the guidelines in subpart D of this part.

(b) To obtain certification of compliance with the State titling guidelines, a State official within the department must submit a written request along with a copy of the State's titling laws, regulations and administrative procedures, to the Commandant (G–NAB), and certify that the State will comply with the participation requirements in subpart C of this part.

(c) The Commandant will review the material, and, if the State complies with the guidelines provided in subpart D of this part, certify compliance.

(d) Appendix B of this part indicates those States that participate in VIS and, have been certified by the Commandant as complying with the guidelines prescribed in subpart D of this part and the date of that certification. A State

with a vessel titling system that complies with the guidelines of subpart D of this part will remain listed, in Appendix B of this part.

Subpart B—Information To Be Collected by Participating States

§ 187.101 Information to identify a vessel owner.

A participating State must collect the following information regarding the ownership of vessels numbered or titled under the laws of that State:

(a) Name of each owner.

(b) The address of the principal place of residence of at least one individual owner, or the address of the principal place of business of an owner that is not an individual, including zip code.

(c) Mailing address of at least one owner, if different from the address required by paragraph (b) of this section.

(d) If the owner is an individual, the owner's social security number, or, if that number is not available, the individual's birth date and driver's license number or, if the individual does not have a driver's license, the individual's birth date and other information to identify that individual as prescribed by the State or titling authority.

(e) If the owner is other than an individual, the owner's—

(1) Taxpayer identification number; or

(2) If the owner does not have a taxpayer identification number, the social security number, or if the social security number is not available, birth date and driver's license number, or if no driver's license number is available, the birth date and other identifying information prescribed by State regulation, of an individual who is a corporate officer, general partner, or individual trustee of the owner and who signed the application for numbering the vessel.

§ 187.103 Information to identify a vessel.

A participating State must collect the following information regarding the identity of a vessel numbered or titled under the laws of that State:

(a) Make of vessel or name of vessel builder, if known.

(b) Manufacture year, year vessel built, or vessel model year, if known.

(c) Vessel identifier required by § 187.5 of this part.

(d) Official number assigned by U.S. Coast Guard or predecessor agency, if applicable.

(e) Number currently assigned by the State issuing authority, as printed on the certificate of number.

(f) Length of vessel.

(g) Type of vessel (open, cabin, house, or other).

(h) Whether the hull is wood, fiberglass, metal, plastic, or other.

(i) Whether the propulsion is inboard, outboard, inboard-outdrive, sail, or other.

(j) Whether the fuel is gasoline, diesel, or other.

(k) Whether the vessel is operated for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial operation.

(l) Number previously issued to the vessel by an issuing authority.

(m) Expiration date of certificate of number issued by the State vessel numbering authority.

§ 187.105 Information on titled vessels.

(a) In addition to the information required under § 187.103, a participating State must collect the following information on a vessel titled in that State:

(1) Title number issued by the State.

(2) Where evidence of a lien or other security interest may be found against a vessel titled in that State.

(3) Name(s) of the lienholder(s).

(4) Address of principal place of residence of each individual lienholder and the address of the principal place of business of each lienholder that is not an individual, including zip code.

(b) Participating States may collect the following information on titled vessels:

(1) Mailing address of any lienholder that is different from the addresses required by paragraph (a)(4) of this section.

(2) Telephone number of each lienholder.

§ 187.107 Information to assist law enforcement officials.

(a) Participating States must make the following information available to assist law enforcement officials:

(1) Notice that a vessel, identified by its vessel identifier, has been reported lost, stolen, destroyed, abandoned, or recovered.

(2) Name and telephone number of organization to contact for additional information or to notify regarding the recovery of a vessel.

(b) Participating States may make the following information available to assist law enforcement officials:

(1) Reported date that the vessel was stolen.

(2) Reported location of vessel when stolen.

(3) Vessel insurance policy number, if insured.

(4) Name of the insurance company.

(5) Address of insurance company, including zip code.

(6) Mailing address of the insurance company for notification, if different from the address provided under paragraph (b)(5) of this section.

(7) Telephone number of insurance company.

(8) Date that the vessel was recovered.

(9) Location of vessel when recovered.

(10) Name(s) and telephone number(s) of organization(s), in addition to the one provided under paragraph (a) of this section, public or private, to contact for additional information on sighting and recovery of vessels.

(11) Request to be notified if vessel is sighted.

(12) Purpose of sighting notification request.

(13) Date and time when vessel last sighted.

(14) Location of vessel when last sighted.

(15) Organization to contact for additional information on sighting.

Subpart C—Vessel Identification System Participation Requirements

§ 187.201 Participating State requirements.

A participating State must comply with the following requirements:

(a) Collect the required information listed in subpart B of this part and provide that information to the vessel identification system in the manner and form specified in the applicable Coast Guard-State Cooperative Agreement.

(b) Obtain specific evidence of ownership, such as certificate of origin or current certificate of title or number, to identify a vessel's owner.

(c) Return any surrendered Certificate of Documentation to the issuing Coast Guard Vessel Documentation Office.

(d) Retain previously issued certificate of number or title and notify issuing authority by mail or electronic message.

(e) Retain information identifying the type of evidence used to establish the accuracy of the information required to be made available to VIS, and make it available to the Coast Guard upon request.

(f) Update the information required to be made available to VIS on a vessel that has not been re-registered by labeling the vessel file ''inactive'' or, if notified that a vessel has been moved to a nonparticipating State, by indicating the new State and notifying the Coast Guard.

§ 187.203 Voluntary provisions for participating States.

A participating State may—

(a) Provide VIS with the optional information listed in subpart B of this part;

(b) Make updated information provided by the vessel owner, government agency or lienholder, available to VIS regarding a vessel that has been moved to a nonparticipating State; and

(c) Interact with nonparticipating States to make information available to, or request information from, VIS concerning a vessel or nationwide statistics.

Subpart D—Guidelines for State Vessel Titling Systems

§ 187.301 Eligibility for preferred mortgage status.

A State vessel titling system that meets the requirements of this subpart may be certified by the Commandant under 46 U.S.C. 31322 (d)(1)(A), in accordance with the procedures of § 187.9, as complying with the guidelines for vessel titling systems for the purpose of conveying preferred mortgage status on mortgages perfected after the date of certification, covering the whole of a vessel titled in that State, provided that the State also complies with the vessel identification system participation requirements of § 187.7 and subpart C of this part.

§ 187.303 Definitions.

A State must define the terms, ''certificate of origin'', ''dealer'', ''department'' or ''division'', ''documented vessel'', ''issuing authority'', ''lienholder'', ''manufacturer'', ''owner'', ''person'', ''security interest'', ''titling authority'', and ''vessel'', substantially as those terms are defined in § 187.3.

§ 187.305 Application for title.

(a) Except as provided in § 187.307, a State must require application for a title within a specified period of time, not to exceed 60 days, after a vessel is first purchased, ownership is transferred, or there is a change in vessel data listed on the certificate of title.

(b) A State must require disclosure of the existence of indebtedness covered by any security agreement pertaining to the vessel in its titling application form.

(c) The title application must include an entry for identification of the State or country in which the vessel was last numbered or titled, if applicable.

(d) A State must require that the title application include a signed certification that statements made are true and correct to the best of the applicant's knowledge, information and belief, under penalty of perjury.

§ 187.307 Dealer and manufacturer provisions.

A State must include the following provisions for dealers or manufacturers, building, buying, acquiring, or transferring vessels, in that State.

(a) Dealers must be required to either report acquisition of a used numbered vessel for resale, or, apply for certificate of title if such vessel is required to be titled.

(b) Dealers must be allowed to apply for a certificate of title for a new vessel acquired for resale.

(c) Dealers and manufacturers must be required to provide to the vessel owner a certificate of origin, or other document, at the time of delivery of a new vessel to initiate the chain of ownership.

(d) Dealers and manufacturers must be required to maintain for at least 3 years a record of any vessel bought, sold, exchanged, or received for sale or exchange, and have such records open for inspection by the State.

§ 187.309 Transfer of title.

Except for transfers by operation of law such as inheritance, order in bankruptcy, replevin, default judgment or execution sale, a State must require that to complete the sale, assignment or transfer of a titled vessel, a manufacturer, dealer or individual, must deliver the vessel's certificate of title to the new owner.

§ 187.311 Transfer by operation of law.

A State must require a new owner to apply for a certificate of title within a specified period of time, not to exceed 60 days, if ownership of a vessel is transferred by operation of law, such as inheritance, order in bankruptcy, replevin, default judgment or execution sale, and to include an original or certified copy of the legal transfer document along with the application.

§ 187.313 Title of another State.

A State must provide for honoring a current and valid title issued by another State, or a Certificate of Ownership issued by the Coast Guard, as proof of ownership for transfer or sale of a vessel, and for applying for certificates of number or title in a new State of principal operation.

§ 187.315 Surrender of title for purposes of documentation.

A State must deem a title issued by that State as invalid when a vessel owner surrenders it to the U.S. Coast Guard for vessel documentation purposes. Upon receipt of a title from the U.S. Coast Guard, a State must accept the returned title for administrative processing and cancellation.

§ 187.317 Information on a certificate of title.

(a) A State must specify the following information on a certificate of title:

(1) Current owner(s) name(s).

(2) The address of the principal place of residence of an individual owner, and the address of the principal place of business of an owner that is not an individual, including zip code.

(3) Date of title issuance.

(4) Vessel description, including the vessel identification number required by § 187.05 of this part, name of manufacturer or model, year built or the model year, vessel length, vessel type, drive or propulsion type, vessel use, hull material and fuel type.

(5) Each lienholder's name and address.

(6) Recording or perfection date of new liens and original recording date of any liens outstanding.

(b) Space must be provided on the certificate of title form for assignment of interests in the vessel, with a certification that statements provided on the title assignment are true and correct to the best of the owner's knowledge, under penalty of perjury.

§ 187.319 Duplicate title.

(a) The term ''DUPLICATE'' must be clearly and permanently marked on the face of a duplicate certificate.

(b) A State must require the holder of an original title, whether the owner or lienholder, to apply for a duplicate title within a specified period of time after, or after the discovery of, the loss, theft, mutilation, or destruction of an original certificate of title; provide information concerning the original certificate and the circumstances of its loss, theft, mutilation, or destruction; and surrender to the department any recovered original title or remains.

§ 187.321 Hull identification number (HIN) provisions.

A State must—

(a) Assign an HIN and require that it be affixed to an undocumented vessel that does not have an HIN at the time of registration or application for title after transfer of ownership or change of State of principal operation;

(b) Assign an HIN to an undocumented vessel without an HIN at time of title application and record the HIN on the certificate of title; and

(c) Prohibit removal or alteration of an HIN without authorization from the Commandant.

§ 187.323 Perfection of security interests.

(a) A State must provide that a security interest is not valid under State law unless perfected under procedures specified by the State. If a vessel is already subject to a security interest when it is brought into a State, the validity of the security interest is to be determined by the law of the jurisdiction where the vessel was titled when the security interest attached. The State must specify at least the following procedures.

(1) The procedures by which a security interest is perfected, including a requirement for the delivery of an application for new or amended certificate of title.

(2) The procedures by which the date of perfection is determined.

(b) The perfection provisions required to be established under paragraphs (a) and (b) of this section must not apply to—

(1) A lien given by statute or rule of law to a supplier of services or materials for the vessel;

(2) A lien given by statute to the United States, a State, or a political subdivision thereof; or

(3) Any lien arising out of an attachment of a vessel.

§ 187.325 Assignments.

A State must specify whether a security interest in a vessel titled under the State titling system may be assigned and the procedures for perfecting assignments.

§ 187.327 Satisfaction of security interests.

A State must specify evidence and information that lienholders are required to submit to the State regarding satisfaction of a security interest, and establish procedures and time limits for its submission.

§ 187.329 Forms.

A State must prescribe and provide the application, certificate of title, notice of security interests, and other forms needed to comply with the titling system provisions.

§ 187.331 Retaining information.

A State must retain information identifying the evidence used to establish the accuracy of the information required for vessel titling purposes for 3 years and make the information available to the Coast Guard on request.

Appendix A to Part 187—Participating Authorities

The following States comply with the requirements for participating in VIS:

[No States currently comply with the requirements for participating in VIS.]

Appendix B to Part 187—Participating and Certified Titling Authorities

The following States both comply with the requirements for participating in VIS and have a titling system certified to be in compliance with the guidelines for State vessel titling systems:

[No States currently have a certified titling system and participate in VIS.]

Dated: April 17, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–10067 Filed 4–24–95; 8:45 am]

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federal register

Tuesday
April 25, 1995

Part III

Department of Education

Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center; Final Priority and Invitation to Apply for New Awards; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.206R]

Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To support a national research and development center to study the education of gifted and talented children and youth.

Eligible Applicants: The following are eligible for a new award under this program: institutions of higher education, State educational agencies, or a combination of these entities.

Deadline for Transmittal of Applications: June 26, 1995.

Applications Available: May 12, 1995.

Estimated Available Funds: This center will be awarded as a cooperative agreement. In fiscal year 1995, $1,750,000 is available for the first year of funding for a national research and development center to study the education of gifted and talented children and youth. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 1 through 5 are estimates. Actual funding will depend upon the availability of funds and needs as reflected in the approved application.

First Year Funding: $1.75 Million
Second Year Funding: $1.75 Million
Third Year Funding: $1.75 Million
Fourth Year Funding: $1.75 Million
Fifth Year Funding: $1.75 Million

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86.

Priority and Selection Criteria: The priority and selection criteria in the notice of final priority, selection criteria and post-award requirements for this program, as published elsewhere in this issue of the **Federal Register** apply to this competition.

For Applications or Information Contact: Beverly E. Coleman, U.S. Department of Education, 555 New Jersey Avenue NW., Room 610F, Washington, D.C. 20208–5573. Telephone: (202) 219–2280; E-mail: bcoleman@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices or discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 10204.

Dated: April 19, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–10103 Filed 4–24–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center

AGENCY: Department of Education.

ACTION: Notice of final priority, selection criteria and post-award requirements for fiscal year 1995.

SUMMARY: The Secretary announces a priority, selection criteria, and post-award requirements for fiscal year 1995. The Secretary takes this action to support a national research and development center to study the education of gifted and talented children and youth. The work of the center is intended to increase knowledge related to improving educational practices so that the nation's gifted and talented children and youth may better contribute to the national welfare. The priority is intended to increase knowledge related to improving educational practices for all students.

EFFECTIVE DATE: This notice of final priority, selection criteria and post-award requirements takes effect May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Beverly E. Coleman, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 610F, Washington, D.C. 20208–5573. Telephone: (202) 219–2280; E-mail: bcoleman@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary seeks to improve the education of gifted and talented children and youth and to use the methods and materials developed in gifted and talented education programs to improve education for all children. This is an integral part of advancing the National Education Goals and GOALS 2000, which require that all students attain high standards of academic excellence. Gifted and talented education programs and methods can contribute to systemic reform, in which schoolwide efforts are used to coordinate high standards, assessments, challenging curricula, and teacher preparation to improve the education of all students. The Secretary also believes that the educational needs of gifted and talented students from populations historically underserved by gifted education programs deserve particular attention.

Under the Jacob K. Javits Gifted and Talented Students Education Act of 1994 (Javits Act) as authorized by the Elementary and Secondary Education Act of 1965 as amended, the Secretary seeks to provide support for a national research and development center designed to conduct sound and coherent education research programs on methods and techniques for gifted and talented education. A deliberate, sustained, and coordinated initiative must be undertaken to carry out research and development activities related to improving the education of gifted and talented students.

The Secretary plans to make the award under this competition as a cooperative agreement. Applicants for the award must be institutions of higher education, State educational agencies, or a combination of these entities. The Secretary believes that this center can strengthen its capacity to accomplish the work of its mission by involving partners such as Historically Black Colleges and Universities (HBCUs), tribal colleges, community colleges, or state and local education research organizations. As described in the Javits Act, the purpose of the center is to increase the understanding of how to improve the education of gifted and talented students, including those who may not be identified or served through traditional assessment methods and programs, such as economically disadvantaged individuals, individuals of limited-English proficiency, and individuals with disabilities. Furthermore, the Secretary believes that the experience and knowledge gained in developing and implementing programs for gifted and talented students can and should be used as a basis to develop

rich and challenging curricula for all students, and to design instructional strategies and other means to improve all students' education. Finally, the Secretary believes that educators should consider the schoolwide impact of gifted and talented programs.

In the course of developing this final priority, selection criteria and post-award requirements, the Secretary has followed legally mandated procedures for rulemaking. On January 12, 1995, the Secretary published a notice in the **Federal Register** (60 FR 2956) inviting written public comments to be submitted on or before February 27, 1995.

Note: This notice of final priority, selection criteria and post-award requirements does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, selection criteria, and post-award requirements, two parties submitted comments. An analysis of the comments follows.

Comments: One commenter wrote to endorse the current grantee. One commenter wrote to express concern that the proposed absolute priority requiring applicants to submit plans to establish a national research and development center that contributes to increasing the capacity of educational systems to provide all students with equal opportunities to learn to high standards and achieve educational success might shift the focus away from the needs of students with high abilities and unusual talents and undercut many reform efforts.

Discussion: Under the Jacob K. Javits Gifted and Talented Students Education Act of 1994, Congress found and declared that, ''(8) the experience and knowledge gained in developing and implementing programs for gifted and talented students can and should be used as a basis to—''(A) develop a rich and challenging curriculum for all students; and ''(B) provide all students with important and challenging subject matter to study and encourage the habits of hard work.''

Changes: None.

Comments: The Department's review revealed an inadvertent omission in the **SUPPLEMENTARY INFORMATION** listing of partners that might strengthen the center's capacity to accomplish its mission. Tribal colleges should have been included in the list.

Discussion: The Secretary believes that a partnership with tribal colleges could strengthen the center's capacity to accomplish its mission and to better serve a special population of gifted and talented students who may not be identified and served through traditional assessment methods.

Changes: The list of partners has been revised to include tribal colleges.

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Each project must propose plans to establish a national research and development center that—

- Conducts research and development activities concerning the educational needs of children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities;
- Contributes to increasing the capacity of educational systems to provide all students with equal opportunities to learn to high standards and achieve educational success;
- Uses research methods in at least some of its studies that involve advanced or innovative quantitative or qualitative techniques of sampling, data gathering, conceptualization and measurement of variables, data analyses, and interdisciplinary perspectives;
- Conducts one or more definitive research studies that have national implications and that will inform policy or practice across the nation; i.e., use large representative samples and rigorous scientific techniques that preclude biased results and support generalizable, replicable findings concerning the education of sizable populations of children or youth;
- Includes research and development activities related to the following topics:

(a) Identifying, teaching, and serving gifted and talented students;

(b) Improving the education of gifted and talented students who may not be identified and served through traditional assessment methods and programs, (including economically disadvantaged individuals, individuals of limited-English proficiency, and individuals with disabilities);

(c) Using knowledge and experience gained in developing and implementing gifted and talented programs and methods to serve all students; and

(d) Understanding the effects of gifted education programs on the educational achievement of students schoolwide; and

- Documents, reports, and disseminates its research activities in ways that will allow others to use the research results.

Selection Criteria

The Secretary will not use the selection criteria established in the Javits Gifted and Talented Program regulations, 34 CFR 791.21. The Secretary will use selection criteria consistent with the provisions for the Educational Research, Development, Dissemination and Improvement Act of 1994. The Secretary will use the following selection criteria to evaluate applications for the center award. The maximum score for all these criteria is 100 points. The maximum score for each criterion is indicated in parentheses:

(a) *Research Mission and Technical Soundness.* (40 points) The Secretary reviews each application to determine the quality and significance of the center's overall research agenda, definitive study or studies, and other individual research projects, including—

(1) The coherence, significance, and technical merits of the center's research projects and agenda, in the context of the current state of the field; and

(2) The importance, quality of design and methodological rigor of the center's definitive study or studies.

(b) *Personnel.* (30 points) The Secretary reviews each application to determine the qualifications and time commitments of the center's personnel, including—

(1) The time commitment, experiences, and expertise of the primary researchers enabling them to achieve the center's mission; and

(2) The qualifications of the Director and support staff, and whether they will commit at least a majority of their time to center activities.

(c) *Institutional Arrangements.* (30 points) The Secretary reviews each application to evaluate the capacity of the center's institutional structure and arrangements to support the center's projects and objectives, including—

(1) The center's ability to respond to and provide leadership for those who can use or benefit from the center's research;

(2) The center's plans to support, monitor, and complete research projects that meet the highest standards of professional excellence; and

(3) The center's ability to disseminate useful research findings and other information to appropriate audiences in

ways that will maximize the benefits of its work.

Post-Award Requirements

The Secretary will use the following post-award requirements to evaluate applications for the center award. The post-award requirements are consistent with the Educational Research, Development, Dissemination and Improvement Act of 1994. A grantee receiving a center award shall—

(a) Provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

(b) Conduct and evaluate research projects in conformity to the highest professional standards of research practice; and

(c) Reserve five percent of each budget period's funds to support activities that fall within the center's mission, are designed and mutually agreed to by both the center and OERI, and enhance OERI's ability to carry out its mission. Such activities may include developing research agendas, conducting research projects, collaborating with other federally-supported entities, and engaging in leadership and dissemination activities.

The Secretary believes that use of the selection criteria will improve the quality of applications, and that the post-award requirements will enhance the quality of the center's research, development, and dissemination activities.

Program Authority: 20 U.S.C. 10204.

(Catalog of Federal Domestic Assistance Number 84.206, Jacob K. Javits Gifted and Talented Students Education Program)

Dated: April 19, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–10102 Filed 4–24–95; 8:45 am]

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federal register

Tuesday
April 25, 1995

Part IV

Department of Education

Postsecondary Education: Federal Student Assistance Programs Under Title IV; Experimental Sites; Notice

DEPARTMENT OF EDUCATION

Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting proposals for experimental sites.

SUMMARY: The Secretary invites institutions of higher education to propose new ways of administering the student assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). Under section 487A(d) of the HEA, if the Secretary approves an institution as an experimental site as a part of this student aid reform initiative, he may exempt the institution from any Title IV statutory or regulatory requirement that would bias experimental results. The Secretary anticipates approving approximately 50 experiments in the first phase of this initiative and more after those experiments are in place. The Secretary establishes no regulatory requirements for the proposals invited by this notice.

DATES: Proposals may be submitted in response to this notice at any time after April 25, 1995.

ADDRESSES: Jeffrey S. Baker, U.S. Department of Education, 600 Independence Avenue, SW (Room 3042, ROB–3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Baker, telephone: (202) 708–9261. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Over the course of the past year, the Department of Education has made progress in simplifying regulations and administrative processes for the Federal student assistance programs authorized by Title IV of the HEA. Regulatory burden on institutions, students, and families has been reduced, and institutional flexibility in meeting legal requirements has been increased.

During the coming months, the Secretary will undertake a series of additional initiatives to free institutions of higher education from administrative burdens that unnecessarily draw resources away from their educational mission. With this notice, the Secretary invites proposals to reinvent the administration of Federal student assistance programs through the use of the experimental sites authority. At the same time, at the direction of the President, the Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be modified or eliminated. On the basis of these two initiatives, as well as the Department's continuing dialogue with the higher education community, the Secretary will also consider developing proposals for statutory amendments to eliminate unnecessary administrative burden. Finally, the Secretary will increase the flexibility and expand the scope of the Department's Institutional Quality Assurance Program, which employs a cycle of assessment, improvement, and preventive actions in the administration of Title IV programs.

The invitation for proposals in this notice is a part of the Secretary's effort to reform Title IV program administration in partnership with the higher education community. The community has given the Department the benefit of its views in a variety of ways during the past year—in negotiated rulemaking, in comments on proposed rules, at a series of regional meetings, and in numerous informal discussions. The community's views were indispensable to the reforms that the Department has undertaken to date. It is the Secretary's hope that the community will address issues of program administration that remain to be resolved in the proposals invited by this notice.

Invitation for Proposals

The Secretary invites institutions of higher education that administer one or more Title IV programs to submit one or more proposals to participate as ''experimental sites'' under section 487A(d) of the HEA. This section authorizes the Secretary to select institutions for voluntary participation in experiments to test new ways of administering the student assistance programs. The Secretary is further authorized to exempt a participating institution from any Title IV statutory or regulatory requirement that would bias experimental results.

The Secretary establishes no regulatory requirements for the proposals invited by this notice. It is the Secretary's hope that this approach will encourage institutions to develop truly innovative strategies that relieve unnecessary burden, maintain program accountability, and inform the Department's future efforts to improve Title IV program administration. If these experimental strategies prove successful, the Secretary intends to incorporate them into Title IV program regulations or, if appropriate, legislative proposals.

Submission of Proposals

Any institution that administers a Title IV program, or a group of these institutions, may submit a proposal in response to this notice at any time by mailing the proposal to Jeffrey S. Baker at the address provided at the beginning of this notice or by faxing it to him at (202) 205–0786. Early submission is encouraged, as the Secretary anticipates that the review of proposals will begin within 60 days of the date of this notice; however, proposals that are received later will also be considered.

The Secretary particularly invites proposals from institutions that are participating in the William D. Ford Federal Direct Loan (Direct Loan) Program. The availability of comprehensive and timely management information under the Direct Loan Program permits effective monitoring, evaluation, and adjustment of administrative practices by participating institutions. The Secretary encourages these institutions to develop proposals that take advantage of this capability. Similarly, the Secretary encourages proposals from institutions that are participating in the Department's Institutional Quality Assurance Program and have developed their own comprehensive systems to identify and remedy problems in the administration of Title IV programs.

The Secretary emphasizes that the Department seeks to approve proposals for innovative approaches in a variety of different areas. Since the Secretary anticipates approving only a small number of different experimental solutions to any one problem, he encourages institutions to collaborate in the development of proposals and to submit proposals together.

To aid in the Department's review of proposals, the Secretary suggests, but does not require, that a proposal be in the range of two to eight pages and that it answer the following questions:

- What problem experienced by the institution or its students, or both, does the proposal address?
- What is the institution's proposed solution to that problem?
- From which specific statutory or regulatory requirements does the institution seek relief in order to test its proposed solution?
- What performance measures or alternative actions does the institution propose to use to fulfill the underlying purpose of the requirements from which relief is sought?

- For what period is the experiment proposed?
- When and how will the results of the experiment be reported to the Department?
- For an experiment proposed by a group of institutions, how will the group monitor and aggregate the results of the experiment?

The following examples illustrate the elements of the proposals solicited by this notice. The problems addressed by the examples were selected because they have been the subject of considerable commentary by the higher education community. The Secretary's inclusion of these examples and not others is in no way intended to circumscribe the creativity of the community in identifying problems and developing solutions to them.

Example 1. An institution finds that the statutorily-required 30-day delay in the disbursement of student loan proceeds to college freshmen makes it difficult for them to pay for books, housing, and other educational costs incurred at the beginning of the school term. The institution proposes to disburse loan proceeds by the beginning of the school term and seeks relief from the requirements that preclude this action:

- Section 428G(b)(1) of the HEA;
- 34 CFR 682.604(c)(5), for the Federal Family Education Loan (FFEL) Program; and
- 34 CFR 685.303(b)(6) and 685.303(b)(4), for the Direct Loan Program in its first year and its subsequent years, respectively.

To address the underlying purpose of the 30-day delayed disbursement requirement (protection against possible losses to the taxpayer and harm to the student in the event of the student's early withdrawal from school), the institution provides information indicating that few of its freshmen have withdrawn from school in the first 30 days of their courses of study. The institution also describes how it proposes to measure its performance in this respect and report that performance to the Department over a specified period.

Example 2. An institution finds that its counseling of student loan borrowers, required in part by statute and in part by regulation, is inefficient and ineffective in ensuring that borrowers repay their student loans. The institution proposes an innovative alternative and seeks relief from the requirements that preclude this action:

- Sections 485(b) and, for the Federal Perkins Loan Program, 463A of the HEA;
- 34 CFR 682.604 (f) and (g), for the FFEL Program;
- 34 CFR 685.303 (e) and (f), and 685.304, for the Direct Loan Program in its first year and its subsequent years, respectively; and
- 34 CFR 674.16(a) and 674.42(a) for the Federal Perkins Loan Program.

To address the underlying purpose of the entrance and exit counseling requirements (promotion of borrowers' understanding of their responsibilities under the student loan programs), the institution describes its alternative approach and explains why it believes this approach will be more effective. It also describes how it proposes to measure its success in ensuring that borrowers repay their loans and report its performance to the Department over a specified period.

(Approved by the Office of Management and Budget under control number 1840–0708)

Review of Proposals

The Secretary will review each proposal submitted in response to this notice on its own merits. If a proposal is approved, the participating institution's program participation agreement will be amended to reflect the terms of the experiment, including the obligations undertaken by the institution, the requirements from which the institution is relieved, the length of the experiment, and the right of either the institution or the Department to terminate the experiment.

In reviewing proposals, the Secretary will be guided by the statutory purpose of the experimental sites authority, namely, to inform future policy choices relating to the administration of Title IV programs. The Secretary may approve a proposal as submitted, reject it, or, if he finds that a proposal is not fully approvable but has merit, work with the institution to refine it. To maximize the usefulness of experimental sites in informing future policy choices, the Secretary may encourage different approaches in similar institutions and similar approaches in different types of institutions. In addition, to ensure the smooth implementation of this reform initiative, the Secretary anticipates approving approximately 50 proposals from among those submitted in the first phase of the initiative and more after those experiments are in place.

Request for Comment

The Secretary invites institutions of higher education, students, and other interested parties to comment on the student aid reform initiative announced in this notice. Is the Department on the right track in inviting proposals to reinvent Title IV program administration in this way? What else should the Department be doing to accomplish the objectives of this initiative? Does the Department's non-regulatory guidance impose unnecessary administrative burdens? If so, how can the Department provide relief from that guidance? Comments may be directed to the contact person identified in this notice.

Dated: April 19, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–10101 Filed 4–24–95; 8:45 am]

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federal register

Tuesday
April 25, 1995

Part V

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5193–3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') which is Appendix B to 40 CFR part 300 constitutes this list.

This rule adds 4 new sites to the NPL, 3 to the General Superfund Section and 1 to the Federal Facilities Section.

The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL is not intended to define the boundaries of a site or to determine the extent of contamination (see Section II, subsection, ''Facility Boundaries''). This action results in an NPL of 1,238 sites, 1,083 of them in the General Superfund Section and 155 of them in the Federal Facilities Section. An additional 51 sites are proposed, 44 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,289.

EFFECTIVE DATE: The effective date is May 25, 1995. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see ''Information Available to the Public'' in Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Final Rule
IV. Executive Order 12866
V. Regulatory Flexibility Act Analysis
VI. Unfunded Mandates Reform Act of 1995

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law No. 99–499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action * * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 USC 9601(23). ''Remedial'' actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 USC 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List (''NPL'').

CERCLA section 105(a)(8)(B) defines the NPL as a list of ''releases'' and as a list of the highest priority ''facilities.'' The discussion below may refer to the ''releases or threatened releases'' that are included on the NPL interchangeably as ''releases,'' ''facilities,'' or ''sites.''

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the

environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on December 16, 1994 (59 FR 65206).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed by other Federal agencies (the ''Federal Facilities Section''). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 75 sites from the General Superfund Section of the NPL, most recently Olmsted County Sanitary Landfill, Oronoco, Minnesota (60 FR 8570, February 15, 1995); Boise Cascade/Onan Corp./Medtronics, Inc., Fridley, Minnesota (60 FR 8570, February 15, 1995); Kent City Mobile Home Park, Kent City, Michigan (60 FR 14645, March 20, 1995); Crystal City Airport, Crystal City, Texas (60 FR 15247, March 23, 1995); Radium Chemical Co., Inc., New York City, New York (60 FR 15489, March 24, 1995); Independent Nail Co., Beaufort, South Carolina (60 FR 16808, April 3, 1995); and Wilson Concepts of Florida, Inc., Pompano Beach, Florida (60 FR 17004, April 4, 1995).

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) the site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 74 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 217 sites are also in the NPL CCL, all but three from the General Superfund Section. Thus, as of March 1995, the CCL consists of 291 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of February 28, 1995, EPA had conducted 660 removal actions at NPL sites, and 2,382 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Action in This Notice

This final rule adds 4 sites to the NPL, 3 to the General Superfund Section and 1 to the Federal Facilities Section. Two of these sites are added to the NPL based on an HRS score of 28.5 or greater. One is added based on the ATSDR Health Advisory Criteria and one is added consequent to its designation as a State top priority. These actions result in an NPL of 1,238 sites, 1,083 of them in the General Superfund Section and 155 of them in the Federal Facilities Section. An additional 51 sites remain proposed, 44 in the General Superfund Section and 7 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,289.

Information Available to the Public

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Addresses and phone numbers for the Headquarters and Regional dockets follow.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 703/603–8917 (Please note this is viewing address only. Do not mail documents to this address.)

James Kyed, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

Walter Schoepf, Region 2, U.S. EPA, 290 Broadway, 18th Floor, New York, NY 10007–1866, 212/637–4319

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904

Kathy Piselli, Region 4, U.S. EPA, 345 Courtland Street, NE, Atlanta, GA 30365, 404/347–4216

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Carole Long, Region 7, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598

Rachel Loftin, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103

For the sites added to the NPL based on an HRS score of 28.5 or greater, the Headquarters docket for this rule contains HRS score sheets for the final sites; Documentation Records for the sites describing the information used to compute the scores; pertinent information regarding statutory requirements or EPA listing policies that affect the sites; and a list of documents referenced in each of the Documentation Records. For the site based on ATSDR Health Advisory criteria the Headquarters docket contains the health advisory issued by ATSDR and other supporting documentation. For the site added to the NPL consequent to its designation as a State top priority, the Headquarters docket contains supporting documentation supplied by the State of Washington and other appropriate documentation. For all of the final sites, the Headquarters docket contains comments received; and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the

Revised National Priorities List Final Rule—April 1995.''

The Regional docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score, when the HRS is used, for the sites. These reference documents are available only in the Regional dockets.

Interested parties may view documents, by appointment only, in the Headquarters or Regional Dockets, or copies may be requested from the Headquarters or Regional Dockets. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. If you wish to obtain documents by mail from EPA Headquarters Docket the mailing address is as follows: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office (Mail Code 5201G), 401 M Street, SW., Washington, DC 20460, 703/603–8917. (Please note this is the mailing address only. If you wish to visit the HQ Docket to view documents, see viewing address above.)

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site serves as notice to potentially responsible parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA may begin a series of increasingly complex evaluations. The first step, the Preliminary Assessment (PA), is a low-cost review of existing information to determine if the site poses a threat to the public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA generally will perform a more extensive study called the Site Inspection (SI). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites that warrant placement on the NPL and further study. To date EPA has completed approximately 37,000 PAs and approximately 18,000 SIs.

The NCP at 40 CFR 300.425(b)(1) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL. Although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990).

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, to proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although it is a factor that is considered, the ranking of sites by HRS scores does not by itself determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(a)(2), 55 FR 8845). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways. Only those that present significant environmental risk or are sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it already was underway. In addition, site listings based on the ATSDR Health Advisory Criteria or designated by states as highest priorities would not have HRS scores.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study (''RI/FS'') that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2). The RI/FS takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 and 40 CFR 300.430.

After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup already is underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for

placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Superfund-financed response action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known ''releases or threatened releases.'' Thus, the purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, described at 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed. The boundaries of the release need not be defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted above and at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected, 40 CFR 300.430(f)) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. . . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984).

See also *City of Stoughton, Wisc.* v. *U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * ''the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway.'' Eagle-Picher [Industries v. EPA] II, 759 F. 2d [921,] at 932 [(D.C. Cir. 1985)].

It is the Agency's policy that, in the exercise of its enforcement discretion, EPA will not take enforcement actions against an owner of residential property to require such owner to undertake response actions or pay response costs, unless the residential homeowner's activities lead to a release or threat of release of hazardous substances, resulting in the taking of a response action at the site (OSWER Directive #9834.6, July 3, 1991). This policy includes residential property owners whose property is located above a ground water plume that is proposed to or on the NPL, where the residential property owner did not contribute to the contamination of the site. EPA may, however, require access to that property during the course of implementing a clean up.

III. Contents of This Notice

This notice promulgates final rules to add 4 sites to the NPL, 3 to the General Superfund Section (Table 1) and 1 to the Federal Facilities Section (Table 2). Proposal #11 (56 FR 35840, July 29, 1991) provided 1 site, and Proposal #15 (58 FR 34018, June 23, 1993) provided 1 site, both of which are being added to the NPL based on HRS scores of 28.50 or greater. Proposal #16 (59 FR 2568, January 18, 1994) provided 2 sites, one of which is being added to the NPL based on ATSDR Health Advisory criteria and one of which is being added to the NPL consequent to being designated as the State's top priority.

As discussed more fully below, the following tables present the sites in this rule arranged alphabetically by State and identifies their rank by group number. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

NATIONAL PRIORITIES LIST FINAL RULE—GENERAL SUPERFUND SECTION

State	Site name	City/County	Group
CT	Raymark Industries, Inc	Stratford	NA
WA	Boomsnub/Airco	Vancouver	NA
WA	Tulalip Landfill	Marysville	5/6

Number of Sites Listed: 3.

NATIONAL PRIORITIES LIST FINAL RULE—FEDERAL FACILITIES SECTION

State	Site name	City/County	Group
OR	Fremont National Forest Uranium Mines (USDA)	Lake County	5/6

Number of Sites Listed: 1.

Public Comments

EPA reviewed all comments received on sites included in this notice. The formal comment period ended on September 27, 1991 for the site from Proposal #11; August 23, 1993 for the site from Proposal #15; February 17, 1994 for the sites from Proposal #16, and October 21, 1994 for the site from Proposal #17.

Based on comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—April 1995.''

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NPL. EPA believes that the kinds of economic effects associated with this revision generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities is controlled by Section 104(c) of CERCLA and the NCP. For privately operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

—For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.

—For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1994) cost estimates available. The estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,350,000
Remedial Design	1,260,000
Remedial Action	[3] 22,500,000
Present Discounted Value O&M [2]	5,630,000

[1] 1994 U.S. Dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 5.8% discount rate.
[3] Includes State cost-share.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to the States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to the States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be

approximately $7 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $14.7 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule revises the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that the listing of the sites in this NPL rule could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined, since adding sites to the NPL does not in itself require any action by any party, and does not determine the liability of any party for the cost of cleanup at the site, that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Environmental protection, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: April 20, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

2. Appendix B to part 300 is revised to read as set forth below:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995

State	Site name	City/County	Notes (a)
AK	Alaska Battery Enterprises	Fairbanks N Star Borough	C
AK	Arctic Surplus	Fairbanks	
AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh	
AL	Interstate Lead Co. (ILCO)	Leeds	
AL	Olin Corp. (McIntosh Plant)	McIntosh	
AL	Perdido Ground Water Contamination	Perdido	C
AL	Redwing Carriers, Inc. (Saraland)	Saraland	
AL	Stauffer Chemical Co. (Cold Creek Plant)	Bucks	
AL	Stauffer Chemical Co. (LeMoyne Plant)	Axis	
AL	T.H. Agriculture & Nutrition (Montgomery)	Montgomery	
AL	Triana/Tennessee River	Limestone/Morgan	C
AR	Arkwood, Inc	Omaha	
AR	Frit Industries	Walnut Ridge	
AR	Gurley Pit	Edmondson	C
AR	Industrial Waste Control	Fort Smith	C
AR	Jacksonville Municipal Landfill	Jacksonville	
AR	Mid-South Wood Products	Mena	C
AR	Midland Products	Ola/Birta	C
AR	Monroe Auto Equipment (Paragould Pit)	Paragould	
AR	Popile, Inc	El Dorado	
AR	Rogers Road Municipal Landfill	Jacksonville	
AR	South 8th Street Landfill	West Memphis	
AR	Vertac, Inc	Jacksonville	
AZ	Apache Powder Co	St. David	
AZ	Hassayampa Landfill	Hassayampa	
AZ	Indian Bend Wash Area	Scottsdale/Tempe/Phoenix	
AZ	Litchfield Airport Area	Goodyear/Avondale	
AZ	Motorola, Inc.(52nd Street Plant)	Phoenix	
AZ	Nineteenth Avenue Landfill	Phoenix	
AZ	Tucson International Airport Area	Tucson.	
CA	Advanced Micro Devices, Inc	Sunnyvale	C
CA	Advanced Micro Devices, Inc. (Bldg. 915)	Sunnyvale	C
CA	Aerojet General Corp	Rancho Cordova	
CA	Applied Materials	Santa Clara	C
CA	Atlas Asbestos Mine	Fresno County	
CA	Beckman Instruments (Porterville Plant)	Porterville	C
CA	Brown & Bryant, Inc.(Arvin Plant)	Arvin	
CA	CTS Printex, Inc	Mountain View	C
CA	Celtor Chemical Works	Hoopa	C
CA	Coalinga Asbestos Mine	Coalinga	
CA	Coast Wood Preserving	Ukiah	
CA	Crazy Horse Sanitary Landfill	Salinas	
CA	Del Norte Pesticide Storage	Crescent City	C
CA	Fairchild Semiconductor Corp. (Mt View)	Mountain View	
CA	Fairchild Semiconductor Corp. (S San Jose)	South San Jose	C
CA	Firestone Tire & Rubber Co. (Salinas Plant)	Salinas	C
CA	Fresno Municipal Sanitary Landfill	Fresno	
CA	Frontier Fertilizer	Davis	
CA	Hewlett-Packard (620–640 Page Mill Road)	Palo Alto	
CA	Industrial Waste Processing	Fresno	
CA	Intel Corp. (Mountain View Plant)	Mountain View	
CA	Intel Corp. (Santa Clara III)	Santa Clara	C
CA	Intel Magnetics	Santa Clara	C
CA	Intersil Inc./Siemens Components	Cupertino	C
CA	Iron Mountain Mine	Redding	
CA	J.H. Baxter & Co	Weed	
CA	Jasco Chemical Corp	Mountain View	
CA	Koppers Co., Inc. (Oroville Plant)	Oroville	
CA	Liquid Gold Oil Corp	Richmond	
CA	Lorentz Barrel & Drum Co	San Jose	
CA	Louisiana-Pacific Corp	Oroville	
CA	MGM Brakes	Cloverdale	C
CA	McColl	Fullerton	
CA	McCormick & Baxter Creosoting Co	Stockton	
CA	Modesto Ground Water Contamination	Modesto	
CA	Monolithic Memories	Sunnyvale	C
CA	Montrose Chemical Corp	Torrance	
CA	National Semiconductor Corp	Santa Clara	
CA	Newmark Ground Water Contamination	San Bernardino	
CA	Operating Industries, Inc., Landfill	Monterey Park	
CA	Pacific Coast Pipe Lines	Fillmore	
CA	Purity Oil Sales, Inc	Malaga	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
CA	Ralph Gray Trucking Co	Westminster	
CA	Raytheon Corp	Mountain View	
CA	San Fernando Valley (Area 1)	Los Angeles	
CA	San Fernando Valley (Area 2)	Los Angeles/Glendale	
CA	San Fernando Valley (Area 3)	Glendale	
CA	San Fernando Valley (Area 4)	Los Angeles	
CA	San Gabriel Valley (Area 1)	El Monte	
CA	San Gabriel Valley (Area 2)	Baldwin Park Area	
CA	San Gabriel Valley (Area 3)	Alhambra	
CA	San Gabriel Valley (Area 4)	La Puente	
CA	Selma Treating Co	Selma	
CA	Sola Optical USA, Inc	Petaluma	C
CA	South Bay Asbestos Area	Alviso	
CA	Southern California Edison Co. (Visalia)	Visalia	
CA	Spectra-Physics, Inc	Mountain View	C
CA	Stringfellow	Glen Avon Heights	S
CA	Sulphur Bank Mercury Mine	Clear Lake	
CA	Synertek, Inc. (Building 1)	Santa Clara	C
CA	T.H. Agriculture & Nutrition Co	Fresno	
CA	TRW Microwave, Inc. (Building 825)	Sunnyvale	C
CA	Teledyne Semiconductor	Mountain View	C
CA	United Heckathorn Co	Richmond	
CA	Valley Wood Preserving, Inc	Turlock	
CA	Waste Disposal, Inc	Santa Fe Springs	
CA	Watkins-Johnson Co (Stewart Division)	Scotts Valley	C
CA	Western Pacific Railroad Co	Oroville	
CA	Westinghouse Electric Corp (Sunnyvale)	Sunnyvale	
CO	Broderick Wood Products	Denver	
CO	California Gulch	Leadville	
CO	Central City-Clear Creek	Idaho Springs	
CO	Chemical Sales Co	Denver	
CO	Denver Radium Site	Denver	
CO	Eagle Mine	Minturn/Redcliff	
CO	Lincoln Park	Canon City	
CO	Lowry Landfill	Arapahoe County	
CO	Marshall Landfill	Boulder County	C, S
CO	Sand Creek Industrial	Commerce City	C
CO	Smuggler Mountain	Pitkin County	
CO	Summitville Mine	Rio Grande County	
CO	Uravan Uranium Project (Union Carbide)	Uravan	
CT	Barkhamsted-New Hartford Landfill	Barkhamsted	
CT	Beacon Heights Landfill	Beacon Falls	
CT	Cheshire Ground Water Contamination	Cheshire	
CT	Durham Meadows	Durham	
CT	Gallup's Quarry	Plainfield	
CT	Kellogg-Deering Well Field	Norwalk	
CT	Laurel Park, Inc	Naugatuck Borough	S
CT	Linemaster Switch Corp	Woodstock	
CT	Nutmeg Valley Road	Wolcott	
CT	Old Southington Landfill	Southington	
CT	Precision Plating Corp	Vernon	
CT	Raymark Industries, Inc	Stratford	A
CT	Solvents Recovery Service New England	Southington	
CT	Yaworski Waste Lagoon	Canterbury	
DE	Army Creek Landfill	New Castle County	C
DE	Chem-Solv, Inc	Cheswold	
DE	Coker's Sanitation Service Landfills	Kent County	C
DE	Delaware City PVC Plant	Delaware City	
DE	Delaware Sand & Gravel Landfill	New Castle County	
DE	Dover Gas Light Co	Dover	
DE	E.I.Du Pont de Nemours (Newport Landfill	Newport	
DE	Halby Chemical Co	New Castle	
DE	Harvey & Knott Drum, Inc	Kirkwood	C
DE	Koppers Co., Inc. (Newport Plant)	Newport	
DE	NCR Corp. (Millsboro Plant)	Millsboro	
DE	New Castle Spill	New Castle County	C
DE	Sealand Limited	Mount Pleasant	C
DE	Standard Chlorine of Delaware, Inc	Delaware City	
DE	Sussex County Landfill No. 5	Laurel	C
DE	Tybouts Corner Landfill	New Castle County	S
DE	Tyler Refrigeration Pit	Smyrna	
DE	Wildcat Landfill	Dover	C

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
FL	Agrico Chemical Co	Pensacola	
FL	Airco Plating Co	Miami	
FL	Alpha Chemical Corp	Galloway	C
FL	American Creosote Works (Pensacola Plt)	Pensacola	
FL	Anaconda Aluminum Co./Milgo Electronics	Miami	C
FL	Anodyne, Inc	North Miami Beach	
FL	B&B Chemical Co., Inc.	Hialeah	C
FL	BMI-Textron	Lake Park	C
FL	Beulah Landfill	Pensacola	C
FL	Brown Wood Preserving	Live Oak	C
FL	Cabot/Koppers	Gainesville	
FL	Chemform, Inc	Pompano Beach	C
FL	Chevron Chemical Co. (Ortho Division)	Orlando	
FL	City Industries, Inc	Orlando	C
FL	Coleman-Evans Wood Preserving Co	Whitehouse	
FL	Davie Landfill	Davie	
FL	Dubose Oil Products Co	Cantonment	
FL	Escambia Wood—Pensacola	Pensacola	
FL	Florida Steel Corp	Indiantown	
FL	Gold Coast Oil Corp	Miami	C
FL	Harris Corp. (Palm Bay Plant)	Palm Bay	
FL	Helena Chemical Co. (Tampa Plant)	Tampa	
FL	Hipps Road Landfill	Duval County	C
FL	Hollingsworth Solderless Terminal	Fort Lauderdale	C
FL	Kassauf-Kimerling Battery Disposal	Tampa	
FL	Madison County Sanitary Landfill	Madison	
FL	Miami Drum Services	Miami	C
FL	Munisport Landfill	North Miami	
FL	Northwest 58th Street Landfill	Hialeah	C
FL	Peak Oil Co./Bay Drum Co	Tampa	
FL	Pepper Steel & Alloys, Inc	Medley	C
FL	Petroleum Products Corp	Pembroke Park	
FL	Pickettville Road Landfill	Jacksonville	
FL	Piper Aircraft/Vero Beach Water & Sewer	Vero Beach	
FL	Reeves Southeast Galvanizing Corp	Tampa	
FL	Sapp Battery Salvage	Cottondale	
FL	Schuylkill Metals Corp	Plant City	
FL	Sherwood Medical Industries	Deland	
FL	Sixty-Second Street Dump	Tampa	
FL	Standard Auto Bumper Corp	Hialeah	C
FL	Stauffer Chemical Co. (Tarpon Springs)	Tarpon Springs	
FL	Sydney Mine Sludge Ponds	Brandon	
FL	Taylor Road Landfill	Seffner	
FL	Tower Chemical Co	Clermont	
FL	Whitehouse Oil Pits	Whitehouse	
FL	Wingate Road Municipal Incinerator Dump	Fort Lauderdale	
FL	Woodbury Chemical Co. (Princeton Plant)	Princeton	C
FL	Yellow Water Road Dump	Baldwin	
FL	Zellwood Ground Water Contamination	Zellwood	
GA	Cedartown Industries, Inc	Cedartown	
GA	Cedartown Municipal Landfill	Cedartown	
GA	Diamond Shamrock Corp. Landfill	Cedartown	
GA	Firestone Tire & Rubber Co. (Albany Plant)	Albany	
GA	Hercules 009 Landfill	Brunswick	
GA	Marzone Inc./Chevron Chemical Co	Tifton	
GA	Mathis Brothers Landfill	Kensington	
GA	Monsanto Corp. (Augusta Plant)	Augusta	C
GA	Powersville Site	Peach County	C
GA	T.H. Agriculture & Nutrition (Albany)	Albany	
GA	Woolfolk Chemical Works, Inc	Fort Valley	
GU	Ordot Landfill	Guam	C, S
HI	Del Monte Corp. (Oahu Plantation)	Honolulu County	
IA	Des Moines TCE	Des Moines	
IA	E.I. du Pont de Nemours (County Rd X23)	West Point	C
IA	Electro-Coatings, Inc	Cedar Rapids	
IA	Fairfield Coal Gasification Plant	Fairfield	
IA	Farmers' Mutual Cooperative	Hospers	
IA	John Deere (Ottumwa Works Landfills)	Ottumwa	C
IA	Lawrence Todtz Farm	Camanche	C
IA	Mason City Coal Gasification Plant	Mason City	
IA	Mid-America Tanning Co	Sergeant Bluff	
IA	Midwest Manufacturing/North Farm	Kellogg	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
IA	Northwestern States Portland Cement Co	Mason City	C
IA	Peoples Natural Gas Co	Dubuque	
IA	Red Oak City Landfill	Red Oak	
IA	Shaw Avenue Dump	Charles City	
IA	Sheller-Globe Corp. Disposal	Keokuk	
IA	Vogel Paint & Wax Co	Orange City	C
IA	White Farm Equipment Co. Dump	Charles City	
ID	Bunker Hill Mining & Metallurgical	Smelterville	
ID	Eastern Michaud Flats Contamination	Pocatello	
ID	Kerr-McGee Chemical Corp. (Soda Springs)	Soda Springs	
ID	Monsanto Chemical Co. (Soda Springs)	Soda Springs	
ID	Pacific Hide & Fur Recycling Co	Pocatello	
ID	Union Pacific Railroad Co	Pocatello	
IL	A & F Material Reclaiming, Inc	Greenup	C
IL	Acme Solvent Reclaiming (Morristown Plant	Morristown	
IL	Adams County Quincy Landfills 2 & 3	Quincy	
IL	Amoco Chemicals (Joliet Landfill)	Joliet	
IL	Beloit Corp	Rockton	
IL	Belvidere Municipal Landfill	Belvidere	C
IL	Byron Salvage Yard	Byron	
IL	Central Illinois Public Service Co	Taylorville	
IL	Cross Brothers Pail Recycling (Pembroke)	Pembroke Township	
IL	DuPage County Landfill/Blackwell Forest	Warrenville	
IL	Galesburg/Koppers Co	Galesburg	
IL	H.O.D. Landfill	Antioch	
IL	Ilada Energy Co	East Cape Girardeau	
IL	Interstate Pollution Control, Inc	Rockford	
IL	Johns-Manville Corp	Waukegan	C
IL	Kerr-McGee (Kress Creek/W Branch DuPage)	DuPage County	
IL	Kerr-McGee (Reed-Keppler Park)	West Chicago	
IL	Kerr-McGee (Residential Areas)	West Chicago/DuPage County	
IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago	
IL	LaSalle Electric Utilities	LaSalle	C
IL	Lenz Oil Service, Inc	Lemont	
IL	MIG/Dewane Landfill	Belvidere	
IL	NL Industries/Taracorp Lead Smelter	Granite City	
IL	Ottawa Radiation Areas	Ottawa	
IL	Outboard Marine Corp	Waukegan	S
IL	Pagel's Pit	Rockford	
IL	Parsons Casket Hardware Co	Belvidere	
IL	Southeast Rockford Gd Wtr Contamination	Rockford	
IL	Tri-County Landfill/Waste Mgmt Illinois	South Elgin	
IL	Velsicol Chemical Corp. (Illinois)	Marshall	C
IL	Wauconda Sand & Gravel	Wauconda	
IL	Woodstock Municipal Landfill	Woodstock	
IL	Yeoman Creek Landfill	Waukegan	
IN	American Chemical Service, Inc	Griffith	
IN	Bennett Stone Quarry	Bloomington	
IN	Carter Lee Lumber Co	Indianapolis	
IN	Columbus Old Municipal Landfill #1	Columbus	C
IN	Conrail Rail Yard (Elkhart)	Elkhart	
IN	Continental Steel Corp	Kokomo	
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka	
IN	Envirochem Corp	Zionsville	
IN	Fisher-Calo	LaPorte	
IN	Fort Wayne Reduction Dump	Fort Wayne	
IN	Galen Myers Dump/Drum Salvage	Osceola	
IN	Himco Dump	Elkhart	
IN	Lake Sandy Jo (M&M Landfill)	Gary	C
IN	Lakeland Disposal Service, Inc	Claypool	
IN	Lemon Lane Landfill	Bloomington	
IN	MIDCO I	Gary	
IN	MIDCO II	Gary	
IN	Main Street Well Field	Elkhart	
IN	Marion (Bragg) Dump	Marion	
IN	Neal's Dump (Spencer)	Spencer	
IN	Neal's Landfill (Bloomington)	Bloomington	
IN	Ninth Avenue Dump	Gary	
IN	Northside Sanitary Landfill, Inc	Zionsville	
IN	Prestolite Battery Division	Vincennes	
IN	Reilly Tar & Chemical (Indianapolis Plant	Indianapolis	
IN	Seymour Recycling Corp	Seymour	C, S

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
IN	Southside Sanitary Landfill	Indianapolis	
IN	Tippecanoe Sanitary Landfill, Inc	Lafayette	
IN	Tri-State Plating	Columbus	C
IN	Waste, Inc., Landfill	Michigan City	
IN	Wayne Waste Oil	Columbia City	
IN	Whiteford Sales & Service/Nationalease	South Bend	
KS	29th & Mead Ground Water Contamination	Wichita	
KS	57th and North Broadway Streets Site	Wichita Heights	
KS	Arkansas City Dump	Arkansas City	C, S
KS	Chemical Commodities, Inc	Olathe	
KS	Cherokee County	Cherokee County	
KS	Doepke Disposal (Holliday)	Johnson County	
KS	Obee Road	Hutchinson	
KS	Pester Refinery Co	El Dorado	
KS	Strother Field Industrial Park	Cowley County	
KY	A.L. Taylor (Valley of Drums)	Brooks	C
KY	Airco	Calvert City	
KY	B.F. Goodrich	Calvert City	
KY	Brantley Landfill	Island	
KY	Caldwell Lace Leather Co., Inc	Auburn	C
KY	Distler Brickyard	West Point	C
KY	Distler Farm	Jefferson County	C
KY	Fort Hartford Coal Co. Stone Quarry	Olaton	
KY	General Tire & Rubber (Mayfield Landfill)	Mayfield	C
KY	Green River Disposal, Inc	Maceo	
KY	Howe Valley Landfill	Howe Valley	C
KY	Lee's Lane Landfill	Louisville	C
KY	Maxey Flats Nuclear Disposal	Hillsboro	
KY	National Electric Coil/Cooper Industries	Dayhoit	
KY	National Southwire Aluminum Co	Hawesville	
KY	Newport Dump	Newport	C
KY	Red Penn Sanitation Co. Landfill	PeeWee Valley	
KY	Smith's Farm	Brooks	
KY	Tri-City Disposal Co	Shepherdsville	
LA	Agriculture Street Landfill	New Orleans	
LA	American Creosote Works, Inc. (Winnfield)	Winnfield	
LA	Bayou Bonfouca	Slidell	
LA	Bayou Sorrel Site	Bayou Sorrel	C
LA	Cleve Reber	Sorrento	
LA	Combustion, Inc	Denham Springs	
LA	D.L. Mud, Inc	Abbeville	
LA	Dutchtown Treatment Plant	Ascension Parish	
LA	Gulf Coast Vacuum Services	Abbeville	
LA	Old Inger Oil Refinery	Darrow	S
LA	PAB Oil & Chemical Service, Inc	Abbeville	
LA	Petro-Processors of Louisiana Inc	Scotlandville	
MA	Atlas Tack Corp	Fairhaven	
MA	Baird & McGuire	Holbrook	
MA	Blackburn & Union Privileges	Walpole	
MA	Cannon Engineering Corp. (CEC)	Bridgewater	C
MA	Charles-George Reclamation Landfill	Tyngsborough	
MA	Groveland Wells	Groveland	
MA	Haverhill Municipal Landfill	Haverhill	
MA	Hocomonco Pond	Westborough	
MA	Industri-Plex	Woburn	
MA	Iron Horse Park	Billerica	
MA	New Bedford Site	New Bedford	S
MA	Norwood PCBs	Norwood	
MA	Nyanza Chemical Waste Dump	Ashland	
MA	PSC Resources	Palmer	
MA	Re-Solve, Inc	Dartmouth	
MA	Rose Disposal Pit	Lanesboro	C
MA	Salem Acres	Salem	
MA	Shpack Landfill	Norton/Attleboro	
MA	Silresim Chemical Corp	Lowell	
MA	Sullivan's Ledge	New Bedford	
MA	W.R. Grace & Co. Inc. (Acton Plant)	Acton	
MA	Wells G&H	Woburn	
MD	Bush Valley Landfill	Abingdon	
MD	Kane & Lombard Street Drums	Baltimore	
MD	Limestone Road	Cumberland	
MD	Mid-Atlantic Wood Preservers, Inc	Harmans	C

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
MD	Sand, Gravel & Stone	Elkton	
MD	Southern Maryland Wood Treating	Hollywood	
MD	Spectron, Inc	Elkton	
MD	Woodlawn County Landfill	Woodlawn	
ME	McKin Co	Gray	C
ME	O'Connor Co	Augusta	
ME	Pinette's Salvage Yard	Washburn	
ME	Saco Municipal Landfill	Saco	
ME	Saco Tannery Waste Pits	Saco	C
ME	Union Chemical Co., Inc	South Hope	
ME	Winthrop Landfill	Winthrop	
MI	Adam's Plating	Lansing	C
MI	Albion-Sheridan Township Landfill	Albion	
MI	Allied Paper/Portage Ck/Kalamazoo River	Kalamazoo	
MI	American Anodco, Inc	Ionia	C
MI	Anderson Development Co	Adrian	C
MI	Auto Ion Chemicals, Inc	Kalamazoo	C
MI	Avenue ''E'' Ground Water Contamination	Traverse City	
MI	Barrels, Inc	Lansing	
MI	Bendix Corp./Allied Automotive	St. Joseph	
MI	Berlin & Farro	Swartz Creek	
MI	Bofors Nobel, Inc	Muskegon	
MI	Burrows Sanitation	Hartford	C
MI	Butterworth #2 Landfill	Grand Rapids	
MI	Cannelton Industries, Inc	Saulte Saint Marie	
MI	Carter Industrials, Inc	Detroit	
MI	Chem Central	Wyoming Township	
MI	Clare Water Supply	Clare	
MI	Cliff/Dow Dump	Marquette	
MI	Duell & Gardner Landfill	Dalton Township	
MI	Electrovoice	Buchanan	
MI	Folkertsma Refuse	Grand Rapids	C
MI	Forest Waste Products	Otisville	
MI	G&H Landfill	Utica	
MI	Grand Traverse Overall Supply Co	Greilickville	C
MI	Gratiot County Landfill	St. Louis	S
MI	H. Brown Co., Inc	Grand Rapids	
MI	Hedblum Industries	Oscoda	C
MI	Hi-Mill Manufacturing Co	Highland	C
MI	Ionia City Landfill	Ionia	
MI	J & L Landfill	Rochester Hills	
MI	K&L Avenue Landfill	Oshtemo Township	
MI	Kaydon Corp	Muskegon	
MI	Kentwood Landfill	Kentwood	
MI	Kysor Industrial Corp	Cadillac	
MI	Liquid Disposal, Inc	Utica	
MI	Lower Ecorse Creek Dump	Wyandotte	A
MI	Mason County Landfill	Pere Marquette Twp	C
MI	McGraw Edison Corp	Albion	
MI	Metamora Landfill	Metamora	
MI	Michigan Disposal (Cork Street Landfill)	Kalamazoo	
MI	Motor Wheel, Inc	Lansing	
MI	Muskegon Chemical Co	Whitehall	
MI	North Bronson Industrial Area	Bronson	
MI	Northernaire Plating	Cadillac	
MI	Novaco Industries	Temperance	C
MI	Organic Chemicals, Inc	Grandville	
MI	Ossineke Ground Water Contamination	Ossineke	
MI	Ott/Story/Cordova Chemical Co	Dalton Township	
MI	Packaging Corp. of America	Filer City	
MI	Parsons Chemical Works, Inc	Grand Ledge	
MI	Peerless Plating Co	Muskegon	
MI	Petoskey Municipal Well Field	Petoskey	
MI	Rasmussen's Dump	Green Oak Township	
MI	Rockwell International Corp. (Allegan)	Allegan	
MI	Rose Township Dump	Rose Township	
MI	Roto-Finish Co., Inc	Kalamazoo	
MI	SCA Independent Landfill	Muskegon Heights	
MI	Shiawassee River	Howell	
MI	South Macomb Disposal (Landfills 9 & 9A)	Macomb Township	
MI	Southwest Ottawa County Landfill	Park Township	C
MI	Sparta Landfill	Sparta Township	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
MI	Spartan Chemical Co	Wyoming	
MI	Spiegelberg Landfill	Green Oak Township	
MI	Springfield Township Dump	Davisburg	
MI	State Disposal Landfill, Inc	Grand Rapids	
MI	Sturgis Municipal Wells	Sturgis	
MI	Tar Lake	Mancelona Township	
MI	Thermo-Chem, Inc	Muskegon	
MI	Torch Lake	Houghton County	
MI	U.S. Aviex	Howard Township	C
MI	Velsicol Chemical Corp. (Michigan)	St. Louis	C
MI	Verona Well Field	Battle Creek	
MI	Wash King Laundry	Pleasant Plains Twp	
MI	Waste Management of Michigan (Holland)	Holland	
MN	Agate Lake Scrapyard	Fairview Township	C
MN	Arrowhead Refinery Co	Hermantown	
MN	Baytown Township Ground Water Plume	Baytown Township	
MN	Burlington Northern (Brainerd/Baxter)	Brainerd/Baxter	
MN	Dakhue Sanitary Landfill	Cannon Falls	C
MN	East Bethel Demolition Landfill	East Bethel Township	
MN	FMC Corp. (Fridley Plant)	Fridley	C
MN	Freeway Sanitary Landfill	Burnsville	
MN	General Mills/Henkel Corp	Minneapolis	C
MN	Joslyn Manufacturing & Supply Co	Brooklyn Center	
MN	Koch Refining Co./N-Ren Corp	Pine Bend	
MN	Koppers Coke	St. Paul	
MN	Kummer Sanitary Landfill	Bemidji	
MN	Kurt Manufacturing Co	Fridley	
MN	LaGrand Sanitary Landfill	LaGrand Township	
MN	Lehillier/Mankato Site	Lehillier/Mankato	C
MN	Long Prairie Ground Water Contamination	Long Prairie	
MN	MacGillis & Gibbs/Bell Lumber & Pole Co	New Brighton	
MN	NL Industries/Taracorp/Golden Auto	St. Louis Park	
MN	Nutting Truck & Caster Co	Faribault	C
MN	Oak Grove Sanitary Landfill	Oak Grove Township	C
MN	Oakdale Dump	Oakdale	
MN	Perham Arsenic Site	Perham	
MN	Pine Bend Sanitary Landfill	Dakota County	
MN	Reilly Tar&Chem (St. Louis Park Plant)	St. Louis Park	S
MN	Ritari Post & Pole	Sebeka	
MN	South Andover Site	Andover	C
MN	St. Augusta Sanitary Landfill/Engen Dump	St. Augusta Township	
MN	St. Louis River Site	St. Louis County	
MN	St. Regis Paper Co	Cass Lake	
MN	University Minnesota (Rosemount Res Cen)	Rosemount	C
MN	Waite Park Wells	Waite Park	
MN	Washington County Landfill	Lake Elmo	C
MN	Waste Disposal Engineering	Andover	
MN	Whittaker Corp	Minneapolis	C
MN	Windom Dump	Windom	C
MO	Bee Cee Manufacturing Co	Malden	
MO	Big River Mine Tailings/St. Joe Minerals	Desloge	
MO	Conservation Chemical Co	Kansas City	C
MO	Ellisville Site	Ellisville	S
MO	Fulbright Landfill	Springfield	C
MO	Kem-Pest Laboratories	Cape Girardeau	
MO	Lee Chemical	Liberty	C
MO	Minker/Stout/Romaine Creek	Imperial	
MO	Missouri Electric Works	Cape Girardeau	
MO	Oronogo-Duenweg Mining Belt	Jasper County	
MO	Quality Plating	Sikeston	
MO	Shenandoah Stables	Moscow Mills	
MO	Solid State Circuits, Inc	Republic	C
MO	St Louis Airport/HIS/Futura Coatings Co	St. Louis County	
MO	Syntex Facility	Verona	
MO	Times Beach Site	Times Beach	
MO	Valley Park TCE	Valley Park	
MO	Westlake Landfill	Bridgeton	
MO	Wheeling Disposal Service Co. Landfill	Amazonia	C
MS	Flowood Site	Flowood	C, S
MS	Newsom Brothers/Old Reichhold Chemicals	Columbia	
MT	Anaconda Co. Smelter	Anaconda	
MT	East Helena Site	East Helena	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
MT	Idaho Pole Co	Bozeman	
MT	Libby Ground Water Contamination	Libby	C
MT	Milltown Reservoir Sediments	Milltown	
MT	Montana Pole and Treating	Butte	
MT	Mouat Industries	Columbus	
MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge	
NC	ABC One Hour Cleaners	Jacksonville	
NC	Aberdeen Pesticide Dumps	Aberdeen	
NC	Benfield Industries, Inc	Hazelwood	
NC	Bypass 601 Ground Water Contamination	Concord	
NC	Cape Fear Wood Preserving	Fayetteville	
NC	Carolina Transformer Co	Fayetteville	
NC	Celanese Corp. (Shelby Fiber Operations)	Shelby	C
NC	Charles Macon Lagoon & Drum Storage	Cordova	
NC	Chemtronics, Inc	Swannanoa	C
NC	FCX, Inc. (Statesville Plant)	Statesville	
NC	FCX, Inc. (Washington Plant)	Washington	
NC	Geigy Chemical Corp. (Aberdeen Plant)	Aberdeen	
NC	General Electric Co./Shepherd Farm	East Flat Rock	
NC	JFD Electronics/Channel Master	Oxford	
NC	Jadco-Hughes Facility	Belmont	
NC	Koppers Co. Inc. (Morrisville Plant)	Morrisville	
NC	Martin-Marietta, Sodyeco, Inc	Charlotte	
NC	NC State University (Lot 86, Farm Unit #1)	Raleigh	
NC	National Starch & Chemical Corp	Salisbury	
NC	New Hanover Cnty Airport Burn Pit	Wilmington	
NC	Potter's Septic Tank Service Pits	Maco	
ND	Arsenic Trioxide Site	Southeastern ND	C, S
ND	Minot Landfill	Minot	
NE	10th Street Site	Columbus	
NE	Cleburn Street Well	Grand Island	
NE	Hastings Ground Water Contamination	Hastings	
NE	Lindsay Manufacturing Co	Lindsay	
NE	Nebraska Ordnance Plant (Former)	Mead	
NE	Ogallala Ground Water Contamination	Ogallala	
NE	Sherwood Medical Co	Norfolk	
NE	Waverly Ground Water Contamination	Waverly	C
NH	Auburn Road Landfill	Londonderry	
NH	Coakley Landfill	North Hampton	
NH	Dover Municipal Landfill	Dover	
NH	Fletcher's Paint Works & Storage	Milford	
NH	Kearsarge Metallurgical Corp	Conway	C
NH	Keefe Environmental Services	Epping	C
NH	Mottolo Pig Farm	Raymond	C
NH	New Hampshire Plating Co	Merrimack	
NH	Ottati & Goss/Kingston Steel Drum	Kingston	
NH	Savage Municipal Water Supply	Milford	
NH	Somersworth Sanitary Landfill	Somersworth	
NH	South Municipal Water Supply Well	Peterborough	C
NH	Sylvester	Nashua	C, S
NH	Tibbets Road	Barrington	
NH	Tinkham Garage	Londonderry	
NH	Town Garage/Radio Beacon	Londonderry	C
NJ	A.O. Polymer	Sparta Township	
NJ	American Cyanamid Co	Bound Brook	
NJ	Asbestos Dump	Millington	
NJ	Bog Creek Farm	Howell Township	C
NJ	Brick Township Landfill	Brick Township	
NJ	Bridgeport Rental & Oil Services	Bridgeport	
NJ	Brook Industrial Park	Bound Brook	
NJ	Burnt Fly Bog	Marlboro Township	
NJ	CPS/Madison Industries	Old Bridge Township	
NJ	Caldwell Trucking Co	Fairfield	
NJ	Chemical Control	Elizabeth	C
NJ	Chemical Insecticide Corp	Edison Township	
NJ	Chemical Leaman Tank Lines, Inc	Bridgeport	
NJ	Chemsol, Inc	Piscataway	
NJ	Ciba-Geigy Corp	Toms River	
NJ	Cinnaminson Ground Water Contamination	Cinnaminson Township	
NJ	Combe Fill North Landfill	Mount Olive Township	C
NJ	Combe Fill South Landfill	Chester Township	
NJ	Cosden Chemical Coatings Corp	Beverly	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
NJ	Curcio Scrap Metal, Inc	Saddle Brook Township	
NJ	D'Imperio Property	Hamilton Township	
NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough	
NJ	De Rewal Chemical Co	Kingwood Township	
NJ	Delilah Road	Egg Harbor Township	
NJ	Denzer & Schafer X-Ray Co	Bayville	
NJ	Diamond Alkali Co	Newark	
NJ	Dover Municipal Well 4	Dover Township	
NJ	Ellis Property	Evesham Township	
NJ	Evor Phillips Leasing	Old Bridge Township	
NJ	Ewan Property	Shamong Township	
NJ	Fair Lawn Well Field	Fair Lawn	
NJ	Florence Land Recontouring Landfill	Florence Township	
NJ	Fried Industries	East Brunswick Township	
NJ	GEMS Landfill	Gloucester Township	
NJ	Garden State Cleaners Co	Minotola	
NJ	Glen Ridge Radium Site	Glen Ridge	
NJ	Global Sanitary Landfill	Old Bridge Township	
NJ	Goose Farm	Plumstead Township	C
NJ	Helen Kramer Landfill	Mantua Township	C
NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown	
NJ	Higgins Disposal	Kingston	
NJ	Higgins Farm	Franklin Township	
NJ	Hopkins Farm	Plumstead Township	
NJ	Imperial Oil Co., Inc./Champion Chemicals	Morganville	
NJ	Industrial Latex Corp	Wallington Borough	
NJ	JIS Landfill	Jamesburg/S. Brnswck	
NJ	Jackson Township Landfill	Jackson Township	C
NJ	Kauffman & Minteer, Inc	Jobstown	
NJ	Kin-Buc Landfill	Edison Township	
NJ	King of Prussia	Winslow Township	
NJ	Landfill & Development Co	Mount Holly	
NJ	Lang Property	Pemberton Township	
NJ	Lipari Landfill	Pitman	
NJ	Lodi Municipal Well	Lodi	C
NJ	Lone Pine Landfill	Freehold Township	C
NJ	Mannheim Avenue Dump	Galloway Township	C
NJ	Maywood Chemical Co	Maywood/Rochelle Park	
NJ	Metaltec/Aerosystems	Franklin Borough	
NJ	Monitor Devices/Intercircuits Inc	Wall Township	
NJ	Montclair/West Orange Radium Site	Montclair/W Orange	
NJ	Montgomery Township Housing Development	Montgomery Township	
NJ	Myers Property	Franklin Township	
NJ	NL Industries	Pedricktown	
NJ	Nascolite Corp	Millville	
NJ	PJP Landfill	Jersey City	
NJ	Pepe Field	Boonton	
NJ	Pijak Farm	Plumstead Township	
NJ	Pohatcong Valley Ground Water Contaminat	Warren County	
NJ	Pomona Oaks Residential Wells	Galloway Township	C
NJ	Price Landfill	Pleasantville	S
NJ	Radiation Technology, Inc	Rockaway Township	
NJ	Reich Farms	Pleasant Plains	
NJ	Renora, Inc	Edison Township	
NJ	Rockaway Borough Well Field	Rockaway Township	
NJ	Rockaway Township Wells	Rockaway	
NJ	Rocky Hill Municipal Well	Rocky Hill Borough	
NJ	Roebling Steel Co	Florence	
NJ	Sayreville Landfill	Sayreville	
NJ	Scientific Chemical Processing	Carlstadt	
NJ	Sharkey Landfill	Parsippany/Troy Hls	
NJ	Shieldalloy Corp	Newfield Borough	
NJ	South Brunswick Landfill	South Brunswick	C
NJ	South Jersey Clothing Co	Minotola	
NJ	Spence Farm	Plumstead Township	
NJ	Swope Oil & Chemical Co	Pennsauken	
NJ	Syncon Resins	South Kearny	
NJ	Tabernacle Drum Dump	Tabernacle Township	C
NJ	U.S. Radium Corp	Orange	
NJ	Universal Oil Products (Chemical Division)	East Rutherford	
NJ	Upper Deerfield Township Sanit. Landfill	Upper Deerfield Township	C
NJ	Ventron/Velsicol	Wood Ridge Borough	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
NJ	Vineland Chemical Co., Inc	Vineland	
NJ	Vineland State School	Vineland	C
NJ	Waldick Aerospace Devices, Inc	Wall Township	
NJ	White Chemical Corp	Newark	A
NJ	Williams Property	Swainton	
NJ	Wilson Farm	Plumstead Township	C
NJ	Witco Chemical Corp. (Oakland Plt)	Oakland	C
NJ	Woodland Route 532 Dump	Woodland Township	
NJ	Woodland Route 72 Dump	Woodland Township	
NM	AT & SF (Clovis)	Clovis	
NM	AT&SF (Albuquerque)	Albuquerque	
NM	Cimarron Mining Corp	Carrizozo	C
NM	Cleveland Mill	Silver City	
NM	Homestake Mining Co	Milan	
NM	Prewitt Abandoned Refinery	Prewitt	
NM	South Valley	Albuquerque	S
NM	United Nuclear Corp	Church Rock	
NV	Carson River Mercury Site	Lyon/Churchill Cnty	
NY	Action Anodizing, Plating, & Polishing	Copiague	C
NY	American Thermostat Co	South Cairo	
NY	Anchor Chemicals	Hicksville	
NY	Applied Environmental Services	Glenwood Landing	
NY	Batavia Landfill	Batavia	
NY	Brewster Well Field	Putnam County	
NY	Byron Barrel & Drum	Byron	
NY	Carroll & Dubies Sewage Disposal	Port Jervis	
NY	Circuitron Corp	East Farmingdale	
NY	Claremont Polychemical	Old Bethpage	
NY	Clothier Disposal	Town of Granby	C
NY	Colesville Municipal Landfill	Town of Colesville	
NY	Conklin Dumps	Conklin	
NY	Cortese Landfill	Village of Narrowsburg	
NY	Endicott Village Well Field	Village of Endicott	
NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby	
NY	Facet Enterprises, Inc	Elmira	
NY	Forest Glen Mobile Home Subdivision	Niagara Falls	A
NY	Fulton Terminals	Fulton	
NY	GCL Tie & Treating Inc	Village of Sidney	
NY	GE Moreau	South Glen Falls	
NY	General Motors (Central Foundry Division)	Massena	
NY	Genzale Plating Co	Franklin Square	
NY	Goldisc Recordings, Inc	Holbrook	
NY	Haviland Complex	Town of Hyde Park	
NY	Hertel Landfill	Plattekill	
NY	Hooker (102nd Street)	Niagara Falls	
NY	Hooker (Hyde Park)	Niagara Falls	
NY	Hooker (S Area)	Niagara Falls	
NY	Hooker Chemical/Ruco Polymer Corp	Hicksville	
NY	Hudson River PCBs	Hudson River	
NY	Islip Municipal Sanitary Landfill	Islip	
NY	Johnstown City Landfill	Town of Johnstown	
NY	Jones Chemicals, Inc	Caledonia	
NY	Jones Sanitation	Hyde Park	
NY	Katonah Municipal Well	Town of Bedford	C
NY	Kenmark Textile Corp	Farmingdale	C
NY	Kentucky Avenue Well Field	Horseheads	
NY	Li Tungsten Corp	Glen Cove	
NY	Liberty Industrial Finishing	Farmingdale	
NY	Love Canal	Niagara Falls	
NY	Ludlow Sand & Gravel	Clayville	
NY	Malta Rocket Fuel Area	Malta	
NY	Marathon Battery Corp	Cold Springs	
NY	Mattiace Petrochemical Co., Inc	Glen Cove	
NY	Mercury Refining, Inc	Colonie	
NY	Nepera Chemical Co., Inc	Maybrook	
NY	Niagara County Refuse	Wheatfield	
NY	Niagara Mohawk Power Co (Saratoga Springs)	Saratoga Springs	
NY	North Sea Municipal Landfill	North Sea	C
NY	Old Bethpage Landfill	Oyster Bay	C
NY	Olean Well Field	Olean	
NY	Onondaga Lake	Syracuse	
NY	Pasley Solvents & Chemicals, Inc	Hempstead	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
NY	Pfohl Brothers Landfill	Cheektowaga	
NY	Pollution Abatement Services	Oswego	S
NY	Port Washington Landfill	Port Washington	
NY	Preferred Plating Corp	Farmingdale	
NY	Ramapo Landfill	Ramapo	
NY	Richardson Hill Road Landfill/Pond	Sidney Center	
NY	Robintech, Inc./National Pipe Co	Town of Vestal	
NY	Rosen Brothers Scrap Yard/Dump	Cortland	
NY	Rowe Industries Gnd Water Contamination	Noyack/Sag Harbor	
NY	SMS Instruments, Inc	Deer Park	
NY	Sarney Farm	Amenia	
NY	Sealand Restoration, Inc	Lisbon	
NY	Sidney Landfill	Sidney	
NY	Sinclair Refinery	Wellsville	
NY	Solvent Savers	Lincklaen	
NY	Syosset Landfill	Oyster Bay	
NY	Tri-Cities Barrel Co., Inc	Port Crane	
NY	Tronic Plating Co., Inc	Farmingdale	C
NY	Vestal Water Supply Well 1–1	Vestal	
NY	Vestal Water Supply Well 4–2	Vestal	
NY	Volney Municipal Landfill	Town of Volney	
NY	Warwick Landfill	Warwick	
NY	York Oil Co	Moira	
OH	Allied Chemical & Ironton Coke	Ironton	
OH	Alsco Anaconda	Gnadenhutten	
OH	Arcanum Iron & Metal	Darke County	
OH	Big D Campground	Kingsville	
OH	Bowers Landfill	Circleville	C
OH	Buckeye Reclamation	St. Clairsville	
OH	Chem-Dyne	Hamilton	C, S
OH	Coshocton Landfill	Franklin Township	
OH	E.H. Schilling Landfill	Hamilton Township	C
OH	Fields Brook	Ashtabula	
OH	Fultz Landfill	Jackson Township	
OH	Industrial Excess Landfill	Uniontown	
OH	Laskin/Poplar Oil Co	Jefferson Township	C
OH	Miami County Incinerator	Troy	
OH	Nease Chemical	Salem	
OH	New Lyme Landfill	New Lyme	C
OH	North Sanitary Landfill	Dayton	
OH	Old Mill	Rock Creek	C
OH	Ormet Corp	Hannibal	
OH	Powell Road Landfill	Dayton	
OH	Pristine, Inc	Reading	
OH	Reilly Tar & Chemical (Dover Plant)	Dover	
OH	Republic Steel Corp. Quarry	Elyria	C
OH	Sanitary Landfill Co. (Industrial Waste)	Dayton	
OH	Skinner Landfill	West Chester	
OH	South Point Plant	South Point	
OH	Summit National	Deerfield Township	
OH	TRW, Inc. (Minerva Plant)	Minerva	C
OH	United Scrap Lead Co., Inc.	Troy	
OH	Van Dale Junkyard	Marietta	
OH	Zanesville Well Field	Zanesville	
OK	Compass Industries (Avery Drive)	Tulsa	C
OK	Double Eagle Refinery Co	Oklahoma City	
OK	Fourth Street Abandoned Refinery	Oklahoma City	
OK	Hardage/Criner	Criner	
OK	Mosley Road Sanitary Landfill	Oklahoma City	
OK	Oklahoma Refining Co	Cyril	
OK	Sand Springs Petrochemical Complex	Sand Springs	
OK	Tar Creek (Ottawa County)	Ottawa County	
OK	Tenth Street Dump/Junkyard	Oklahoma City	
OR	Gould, Inc	Portland	
OR	Joseph Forest Products	Joseph	C
OR	Martin-Marietta Aluminum Co	The Dalles	C
OR	McCormick & Baxter Creos. Co. (Portland)	Portland	
OR	Northwest Pipe & Casing Co	Clackamas	
OR	Reynolds Metals Company	Troutdale	
OR	Teledyne Wah Chang	Albany	
OR	Union Pacific Railroad Tie Treatment	The Dalles	
OR	United Chrome Products, Inc	Corvallis	C

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
PA	A.I.W. Frank/Mid-County Mustang	Exton	
PA	AMP, Inc. (Glen Rock Facility)	Glen Rock	
PA	Aladdin Plating	Scott Township	
PA	Ambler Asbestos Piles	Ambler	C
PA	Austin Avenue Radiation Site	Delaware County	A
PA	Avco Lycoming (Williamsport Division)	Williamsport	
PA	Bally Ground Water Contamination	Bally Borough	
PA	Bell Landfill	Terry Township	
PA	Bendix Flight Systems Division	Bridgewater Township	
PA	Berkley Products Co. Dump	Denver	
PA	Berks Landfill	Spring Township	
PA	Berks Sand Pit	Longswamp Township	C
PA	Blosenski Landfill	West Caln Township	
PA	Boarhead Farms	Bridgeton Township	
PA	Brodhead Creek	Stroudsburg	
PA	Brown's Battery Breaking	Shoemakersville	
PA	Bruin Lagoon	Bruin Borough	C
PA	Butler Mine Tunnel	Pittston	
PA	Butz Landfill	Stroudsburg	
PA	C & D Recycling	Foster Township	
PA	Centre County Kepone	State College Borough	
PA	Commodore Semiconductor Group	Lower Providence Township	
PA	Craig Farm Drum	Parker	
PA	Crater Resources/Keystone Coke/Alan Wood	Upper Merion Township	
PA	Crossley Farm	Hereford Township	
PA	Croydon TCE	Croydon	
PA	CryoChem, Inc	Worman	
PA	Delta Quarries & Disp./Stotler Landfill	Antis/Logan Twps	
PA	Dorney Road Landfill	Upper Macungie Township	
PA	Douglassville Disposal	Douglassville	
PA	Drake Chemical	Lock Haven	
PA	Dublin TCE Site	Dublin Borough	
PA	East Mount Zion	Springettsbury Township	
PA	Eastern Diversified Metals	Hometown	
PA	Elizabethtown Landfill	Elizabethtown	
PA	Fischer & Porter Co	Warminster	
PA	Foote Mineral Co	East Whiteland Township	
PA	Havertown PCP	Haverford	
PA	Hebelka Auto Salvage Yard	Weisenberg Township	C
PA	Heleva Landfill	North Whitehall Township	
PA	Hellertown Manufacturing Co	Hellertown	
PA	Henderson Road	Upper Merion Township	C
PA	Hranica Landfill	Buffalo Township	C
PA	Hunterstown Road	Straban Township	
PA	Industrial Lane	Williams Township	
PA	Jacks Creek/Sitkin Smelting and Refinery	Maitland	
PA	Keystone Sanitation Landfill	Union Township	
PA	Kimberton Site	Kimberton Borough	C
PA	Lackawanna Refuse	Old Forge Borough	C
PA	Lindane Dump	Harrison Township	
PA	Lord-Shope Landfill	Girard Township	
PA	MW Manufacturing	Valley Township	
PA	Malvern TCE	Malvern	
PA	McAdoo Associates	McAdoo Borough	S
PA	Metal Banks	Philadelphia	
PA	Metropolitan Mirror and Glass	Frackville	
PA	Middletown Air Field	Middletown	
PA	Mill Creek Dump	Erie	
PA	Modern Sanitation Landfill	Lower Windsor Township	
PA	Moyers Landfill	Eagleville	
PA	North Penn—Area 1	Souderton	
PA	North Penn—Area 12	Worcester	
PA	North Penn—Area 2	Hatfield	
PA	North Penn—Area 5	Montgomery Township	
PA	North Penn—Area 6	Lansdale	
PA	North Penn—Area 7	North Wales	
PA	Novak Sanitary Landfill	South Whitehall Township	
PA	Occidental Chemical Corp./Firestone Tire	Lower Pottsgrove Township	
PA	Ohio River Park	Neville Island	
PA	Old City of York Landfill	Seven Valleys	
PA	Osborne Landfill	Grove City	
PA	Palmerton Zinc Pile	Palmerton	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
PA	Paoli Rail Yard	Paoli	
PA	Publicker Industries Inc	Philadelphia	
PA	Raymark	Hatboro	
PA	Recticon/Allied Steel Corp	East Coventry Twp	
PA	Resin Disposal	Jefferson Borough	
PA	Revere Chemical Co	Nockamixon Township	
PA	River Road Landfill/Waste Mngmnt, Inc	Hermitage	
PA	Rodale Manufacturing Co., Inc	Emmaus Borough	
PA	Route 940 Drum Dump	Pocono Summit	C
PA	Saegertown Industrial Area	Saegertown	
PA	Shriver's Corner	Straban Township	
PA	Stanley Kessler	King of Prussia	
PA	Strasburg Landfill	Newlin Township	
PA	Taylor Borough Dump	Taylor Borough	C
PA	Tonolli Corp	Nesquehoning	
PA	Tysons Dump	Upper Merion Twp	
PA	UGI Columbia Gas Plant	Columbia	
PA	Walsh Landfill	Honeybrook Township	
PA	Westinghouse Electronic (Sharon Plant)	Sharon	
PA	Westinghouse Elevator Co. Plant	Gettysburg	
PA	Whitmoyer Laboratories	Jackson Township	
PA	William Dick Lagoons	West Caln Township	
PA	York County Solid Waste/Refuse Landfill	Hopewell Township	
PR	Barceloneta Landfill	Florida Afuera	
PR	Fibers Public Supply Wells	Jobos	
PR	Frontera Creek	Rio Abajo	
PR	GE Wiring Devices	Juana Diaz	
PR	Juncos Landfill	Juncos	
PR	RCA Del Caribe	Barceloneta	
PR	Upjohn Facility	Barceloneta	
PR	Vega Alta Public Supply Wells	Vega Alta	
RI	Central Landfill	Johnston	
RI	Davis (GSR) Landfill	Glocester	
RI	Davis Liquid Waste	Smithfield	
RI	Landfill & Resource Recovery, Inc. (L&RR)	North Smithfield	
RI	Peterson/Puritan, Inc	Lincoln/Cumberland	
RI	Picillo Farm	Coventry	S
RI	Rose Hill Regional Landfill	South Kingston	
RI	Stamina Mills, Inc	North Smithfield	
RI	West Kingston Town Dump/URI Disposal	South Kingston	
RI	Western Sand & Gravel	Burrillville	C
SC	Aqua-Tech Environmental Inc. (Groce Labs)	Greer	
SC	Beaunit Corp. (Circular Knit & Dye)	Fountain Inn	
SC	Carolawn, Inc	Fort Lawn	
SC	Elmore Waste Disposal	Greer	
SC	Geiger (C & M Oil)	Rantoules	
SC	Golden Strip Septic Tank Service	Simpsonville	
SC	Helena Chemical Co. Landfill	Fairfax	
SC	Kalama Specialty Chemicals	Beaufort	
SC	Koppers Co., Inc. (Charleston Plant)	Charleston	
SC	Koppers Co., Inc. (Florence Plant)	Florence	
SC	Leonard Chemical Co., Inc	Rock Hill	
SC	Lexington County Landfill Area	Cayce	
SC	Medley Farm Drum Dump	Gaffney	
SC	Palmetto Recycling, Inc	Columbia	
SC	Palmetto Wood Preserving	Dixiana	
SC	Para-Chem Southern, Inc	Simpsonville	
SC	Rochester Property	Travelers Rest	
SC	Rock Hill Chemical Co	Rock Hill	
SC	SCRDI Bluff Road	Columbia	S
SC	SCRDI Dixiana	Cayce	C
SC	Sangamo Weston/Twelve-Mile/Hartwell PCB	Pickens	
SC	Townsend Saw Chain Co	Pontiac	
SC	Wamchem, Inc	Burton	
SD	Whitewood Creek Whitewood	C, S	
SD	Williams Pipe Line Co. Disposal Pit	Sioux Falls	C
TN	American Creosote Works (Jackson Plant)	Jackson	
TN	Amnicola Dump	Chattanooga	C
TN	Arlington Blending & Packaging	Arlington	
TN	Carrier Air Conditioning Co	Collierville	
TN	Chemet Co	Moscow	
TN	Gallaway Pits	Gallaway	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
TN	ICG Iselin Railroad Yard	Jackson	
TN	Lewisburg Dump	Lewisburg	C
TN	Mallory Capacitor Co	Waynesboro	
TN	Murray-Ohio Dump	Lawrenceburg	
TN	North Hollywood Dump	Memphis	S
TN	Velsicol Chemical Corp (Hardeman County)	Toone	
TN	Wrigley Charcoal Plant	Wrigley	
TX	ALCOA (Point Comfort)/Lavaca Bay	Point Comfort	
TX	Bailey Waste Disposal	Bridge City	
TX	Bio-Ecology Systems, Inc	Grand Prairie	C
TX	Brio Refining, Inc	Friendswood	
TX	Crystal Chemical Co	Houston	
TX	Dixie Oil Processors, Inc	Friendswood	C
TX	French, Ltd	Crosby	C
TX	Geneva Industries/Fuhrmann Energy	Houston	
TX	Highlands Acid Pit	Highlands	C
TX	Koppers Co Inc (Texarkana Plant)	Texarkana	
TX	Motco, Inc	La Marque S	
TX	North Cavalcade Street	Houston	
TX	Odessa Chromium #1	Odessa	C
TX	Odessa Chromium #2 (Andrews Highway)	Odessa	C
TX	Pesses Chemical Co	Fort Worth	C
TX	Petro-Chemical Systems (Turtle Bayou)	Liberty County	
TX	Sheridan Disposal Services	Hempstead	
TX	Sikes Disposal Pits	Crosby	C
TX	Sol Lynn/Industrial Transformers	Houston	C
TX	South Cavalcade Street	Houston	
TX	Stewco, Inc	Waskom	C
TX	Texarkana Wood Preserving Co	Texarkana	
TX	Triangle Chemical Co	Bridge City	C
TX	United Creosoting Co	Conroe	
UT	Midvale Slag	Midvale	
UT	Monticello Radioactive Contaminated Prop	Monticello	
UT	Petrochem Recycling Corp./Ekotek Plant	Salt Lake City	
UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City	
UT	Rose Park Sludge Pit	Salt Lake City	C, S
UT	Sharon Steel Corp. (Midvale Tailings)	Midvale	
UT	Utah Power & Light/American Barrel Co	Salt Lake City	
UT	Wasatch Chemical Co. (Lot 6)	Salt Lake City	
VA	Abex Corp	Portsmouth	
VA	Arrowhead Associates/Scovill Corp	Montross	
VA	Atlantic Wood Industries, Inc	Portsmouth	
VA	Avtex Fibers, Inc	Front Royal	
VA	Buckingham County Landfill	Buckingham	
VA	C & R Battery Co., Inc	Chesterfield County	C
VA	Chisman Creek	York County	C
VA	Culpeper Wood Preservers, Inc	Culpeper	
VA	Dixie Caverns County Landfill	Salem	
VA	First Piedmont Rock Quarry (Route 719)	Pittsylvania County	
VA	Greenwood Chemical Co	Newtown	
VA	H & H Inc., Burn Pit	Farrington	
VA	L.A. Clarke & Son	Spotsylvania County	
VA	Rentokil, Inc. (VA Wood Preserving Div)	Richmond	
VA	Rhinehart Tire Fire Dump	Frederick County	
VA	Saltville Waste Disposal Ponds	Saltville	
VA	Saunders Supply Co	Chuckatuck	
VA	U.S. Titanium	Piney River	
VT	BFI Sanitary Landfill (Rockingham)	Rockingham	
VT	Bennington Municipal Sanitary Landfill	Bennington	
VT	Burgess Brothers Landfill	Woodford	
VT	Darling Hill Dump	Lyndon	C
VT	Old Springfield Landfill	Springfield	C
VT	Parker Sanitary Landfill	Lyndon	
VT	Pine Street Canal	Burlington	S
VT	Tansitor Electronics, Inc	Bennington	
WA	ALCOA (Vancouver Smelter)	Vancouver	
WA	American Crossarm & Conduit Co	Chehalis	
WA	Boomsnub/Airco	Vancouver	S
WA	Centralia Municipal Landfill	Centralia	
WA	Colbert Landfill	Colbert	
WA	Commencement Bay, Near Shore/Tide Flats	Pierce County	
WA	Commencement Bay, South Tacoma Channel	Tacoma	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
WA	FMC Corp. (Yakima Pit)	Yakima	C
WA	Frontier Hard Chrome, Inc	Vancouver	
WA	General Electric Co. (Spokane Shop)	Spokane	
WA	Greenacres Landfill	Spokane County	
WA	Harbor Island (Lead)	Seattle	
WA	Hidden Valley Landfill (Thun Field)	Pierce County	
WA	Kaiser Aluminum Mead Works	Mead	
WA	Lakewood Site	Lakewood	C
WA	Mica Landfill	Mica	
WA	Midway Landfill	Kent	
WA	Moses Lake Wellfield Contamination	Moses Lake	
WA	North Market Street	Spokane	
WA	Northside Landfill	Spokane	C
WA	Northwest Transformer	Everson	C
WA	Northwest Transformer (South Harkness St.)	Everson	C
WA	Old Inland Pit	Spokane	
WA	Pacific Car & Foundry Co	Renton	
WA	Pacific Sound Resources	Seattle	
WA	Pasco Sanitary Landfill	Pasco	
WA	Queen City Farms	Maple Valley	
WA	Seattle Municipal Landfill (Kent Hghlnds)	Kent	
WA	Silver Mountain Mine	Loomis	C
WA	Spokane Junkyard/Associated Properties	Spokane	
WA	Tulalip Landfill	Marysville	
WA	Vancouver Water Station #1 Contamination	Vancouver	
WA	Vancouver Water Station #4 Contamination	Vancouver	
WA	Western Processing Co., Inc	Kent	C
WA	Wyckoff Co./Eagle Harbor	Bainbridge Island	
WI	Algoma Municipal Landfill	Algoma	C
WI	Better Brite Plating Chrome & Zinc Shops	DePere	
WI	City Disposal Corp. Landfill	Dunn	
WI	Delavan Municipal Well #4	Delavan	
WI	Eau Claire Municipal Well Field	Eau Claire	C
WI	Fadrowski Drum Disposal	Franklin	
WI	Hagen Farm	Stoughton	
WI	Hechimovich Sanitary Landfill	Williamstown	
WI	Hunts Disposal Landfill	Caledonia	
WI	Janesville Ash Beds	Janesville	
WI	Janesville Old Landfill	Janesville	
WI	Kohler Co. Landfill	Kohler	
WI	Lauer I Sanitary Landfill	Menomonee Falls	
WI	Lemberger Landfill, Inc	Whitelaw	
WI	Lemberger Transport & Recycling	Franklin Township	
WI	Madison Metropolitan Sewerage District	Blooming Grove	
WI	Master Disposal Service Landfill	Brookfield	
WI	Mid-State Disposal, Inc. Landfill	Cleveland Township	C
WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee	
WI	Muskego Sanitary Landfill	Muskego	
WI	N.W. Mauthe Co., Inc	Appleton	S
WI	National Presto Industries, Inc	Eau Claire	
WI	Northern Engraving Co	Sparta	C
WI	Oconomowoc Electroplating Co., Inc	Ashippin	
WI	Omega Hills North Landfill	Germantown	
WI	Onalaska Municipal Landfill	Onalaska	C
WI	Refuse Hideaway Landfill	Middleton	
WI	Ripon City Landfill	Ripon	
WI	Sauk County Landfill	Excelsior	
WI	Schmalz Dump	Harrison	C
WI	Scrap Processing Co., Inc	Medford	
WI	Sheboygan Harbor & River	Sheboygan	
WI	Spickler Landfill	Spencer	
WI	Stoughton City Landfill	Stoughton	
WI	Tomah Armory	Tomah	
WI	Tomah Fairgrounds	Tomah	
WI	Tomah Municipal Sanitary Landfill	Tomah	
WI	Waste Mgmt of WI (Brookfield Sanit LF)	Brookfield	
WI	Wausau Ground Water Contamination	Wausau	C
WI	Wheeler Pit	La Prairie Township	C
WV	Fike Chemical, Inc	Nitro	
WV	Follansbee Site	Follansbee	
WV	Leetown Pesticide	Leetown	C
WV	Ordnance Works Disposal Areas	Morgantown	

TABLE 1.—GENERAL SUPERFUND SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
WY	Baxter/Union Pacific Tie Treating	Laramie	
WY	Mystery Bridge Rd/U.S. Highway 20	Evansville	C

(a) A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).

TABLE 2.—FEDERAL FACILITIES SECTION, APRIL 1995

State	Site name	City/County	Notes (a)
AK	Adak Naval Air Station	Adak	
AK	Eielson Air Force Base	Fairbanks N Star Borough	
AK	Elmendorf Air Force Base	Greater Anchorage Borough	
AK	Fort Richardson (USARMY)	Anchorage	
AK	Fort Wainwright	Fairbanks N Star Borough	
AK	Standard Steel & Metals Salvage Yard (USDOT)	Anchorage	
AL	Alabama Army Ammunition Plant	Childersburg	
AL	Anniston Army Depot (SE Industrial Area)	Anniston	
AL	Redstone Arsenal (USARMY/NASA)	Huntsville	
AZ	Luke Air Force Base	Glendale	
AZ	Williams Air Force Base	Chandler	
AZ	Yuma Marine Corps Air Station	Yuma	
CA	Barstow Marine Corps Logistics Base	Barstow	
CA	Camp Pendleton Marine Corps Base	San Diego County	
CA	Castle Air Force Base	Merced	
CA	Concord Naval Weapons Station	Concord	
CA	Edwards Air Force Base	Kern County	
CA	El Toro Marine Corps Air Station	El Toro	
CA	Fort Ord	Marina	
CA	George Air Force Base	Victorville	
CA	Jet Propulsion Laboratory (NASA)	Pasadena	
CA	LEHR/Old Campus Landfill (USDOE)	Davis	
CA	Lawrence Livermore Lab Site 300 (USDOE)	Livermore	
CA	Lawrence Livermore Laboratory (USDOE)	Livermore	
CA	March Air Force Base	Riverside	
CA	Mather Air Force Base	Sacramento	
CA	McClellan Air Force Base (GW Contam)	Sacramento	
CA	Moffett Naval Air Station	Sunnyvale	
CA	Norton Air Force Base	San Bernardino	
CA	Riverbank Army Ammunition Plant	Riverbank	
CA	Sacramento Army Depot	Sacramento	
CA	Sharpe Army Depot	Lathrop	
CA	Tracy Defense Depot (USARMY)	Tracy	
CA	Travis Air Force Base	Solano County	
CA	Treasure Island Naval Station-Hun Pt An	San Francisco	
CO	Air Force Plant PJKS	Waterton	
CO	Rocky Flats Plant (USDOE)	Golden	
CO	Rocky Mountain Arsenal (USARMY)	Adams County	
CT	New London Submarine Base	New London	
DE	Dover Air Force Base	Dover	
FL	Cecil Field Naval Air Station	Jacksonville	
FL	Homestead Air Force Base	Homestead	
FL	Jacksonville Naval Air Station	Jacksonville	
FL	Pensacola Naval Air Station	Pensacola	
FL	Whiting Field Naval Air Station	Milton	
GA	Marine Corps Logistics Base	Albany	
GA	Robins Air Force Base(Lf#4/Sludge lagoon)	Houston County	
GU	Andersen Air Force Base	Yigo	
HI	Naval Computer & Telecommunications Area	Oahu	
HI	Pearl Harbor Naval Complex	Pearl Harbor	
HI	Schofield Barracks (USARMY)	Oahu	
IA	Iowa Army Ammunition Plant	Middletown	
ID	Idaho National Engineering Lab (USDOE)	Idaho Falls	
ID	Mountain Home Air Force Base	Mountain Home	
IL	Joliet Army Ammunition Plant (LAP Area)	Joliet	
IL	Joliet Army Ammunition Plant (Mfg Area)	Joliet	
IL	Sangamo Electric/Crab Orchard NWR (USDOI)	Carterville	
IL	Savanna Army Depot Activity	Savanna	
KS	Fort Riley	Junction City	
KY	Paducah Gaseous Diffusion Plant (USDOE)	Paducah	

TABLE 2.—FEDERAL FACILITIES SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
LA	Louisiana Army Ammunition Plant	Doyline	
MA	Fort Devens	Fort Devens	
MA	Fort Devens-Sudbury Training Annex	Middlesex County	
MA	Hanscom Field/Hanscom Air Force Base	Bedford	
MA	Materials Technology Laboratory (USARMY)	Watertown	
MA	Natick Laboratory Army Research,D&E Cntr	Natick	
MA	Naval Weapons Industrial Reserve Plant	Bedford	
MA	Otis Air National Guard (USAF)	Falmouth	
MA	South Weymouth Naval Air Station	Weymouth	
MD	Aberdeen Proving Ground (Edgewood Area)	Edgewood	
MD	Aberdeen Proving Ground (Michaelsville LF)	Aberdeen	
MD	Beltsville Agricultural Research (USDA)	Beltsville	
MD	Patuxent River Naval Air Station	St. Mary's County	
ME	Brunswick Naval Air Station	Brunswick	
ME	Loring Air Force Base	Limestone	
ME	Portsmouth Naval Shipyard	Kittery	
MN	Naval Industrial Reserve Ordnance Plant	Fridley	
MN	New Brighton/Arden Hills/TCAAP (USARMY)	New Brighton	
MN	Twin Cities Air Force Base (SAR Landfill)	Minneapolis	C
MO	Lake City Army Ammu. Plant (NW Lagoon)	Independence	
MO	Weldon Spring Former Army Ordnance Works	St.Charles County	
MO	Weldon Spring Quarry/Plant/Pitts (USDOE)	St. Charles County	
NC	Camp Lejeune Military Res. (USNAVY)	Onslow County	
NC	Cherry Point Marine Corps Air Station	Havelock	
NE	Cornhusker Army Ammunition Plant	Hall County	
NH	Pease Air Force Base	Portsmouth/Newington	
NJ	Federal Aviation Admin. Tech. Center	Atlantic County	
NJ	Fort Dix (Landfill Site)	Pemberton Township	
NJ	Naval Air Engineering Center	Lakehurst	
NJ	Naval Weapons Station Earle (Site A)	Colts Neck	
NJ	Picatinny Arsenal (USARMY)	Rockaway Township	
NJ	W.R. Grace/Wayne Interim Storage (USDOE)	Wayne Township	
NM	Cal West Metals (USSBA)	Lemitar	
NM	Lee Acres Landfill (USDOI)	Farmington	
NY	Brookhaven National Laboratory (USDOE)	Upton	
NY	Griffiss Air Force Base	Rome	
NY	Plattsburgh Air Force Base	Plattsburgh	
NY	Seneca Army Depot	Romulus	
OH	Feed Materials Production Center (USDOE)	Fernald	
OH	Mound Plant (USDOE)	Miamisburg	
OH	Wright-Patterson Air Force Base	Dayton	
OK	Tinker Air Force (Soldier Cr/Bldg 300)	Oklahoma City	
OR	Fremont Nat. Forest Uranium Mines (USDA)	Lake County	
OR	Umatilla Army Depot (Lagoons)	Hermiston	
PA	Letterkenny Army Depot (PDO Area)	Franklin County	
PA	Letterkenny Army Depot (SE Area)	Chambersburg	
PA	Naval Air Development Center (8 Areas)	Warminster Township	
PA	Navy Ships Parts Control Center	Mechanicsburg	
PA	Tobyhanna Army Depot	Tobyhanna	
PR	Naval Security Group Activity	Sabana Seca	
RI	Davisville Naval Construction Batt Cent	North Kingston	
RI	Newport Naval Education/Training Center	Newport	
SC	Parris Island Marine Corps Recruit Depot	Parris Island	
SC	Savannah River Site (USDOE)	Aiken	
SD	Ellsworth Air Force Base	Rapid City	
TN	Memphis Defense Depot (DLA)	Memphis	
TN	Milan Army Ammunition Plant	Milan	
TN	Oak Ridge Reservation (USDOE)	Oak Ridge	
TX	Air Force Plant #4 (General Dynamics)	Fort Worth	
TX	Lone Star Army Ammunition Plant	Texarkana	
TX	Longhorn Army Ammunition Plant	Karnack	
TX	Pantex Plant (USDOE)	Pantex Village	
UT	Hill Air Force Base	Ogden	
UT	Monticello Mill Tailings (USDOE)	Monticello	
UT	Ogden Defense Depot (DLA)	Ogden	
UT	Tooele Army Depot (North Area)	Tooele	
VA	Defense General Supply Center (DLA)	Chesterfield County	
VA	Fort Eustis (US Army)	Newport News	
VA	Langley Air Force Base/NASA Langley Cntr	Hampton	
VA	Marine Corps Combat Development Command	Quantico	
VA	Naval Surface Warfare—Dahlgren	Dahlgren	
VA	Naval Weapons Station—Yorktown	Yorktown	

TABLE 2.—FEDERAL FACILITIES SECTION, APRIL 1995—Continued

State	Site name	City/County	Notes (a)
WA	American Lake Gardens/McChord AFB	Tacoma	C
WA	Bangor Naval Submarine Base	Silverdale	
WA	Bangor Ordnance Disposal (USNAVY)	Bremerton	
WA	Bonneville Power Admin Ross (USDOE)	Vancouver	
WA	Fairchild Air Force Base (4 Waste Areas)	Spokane County	
WA	Fort Lewis (Landfill No. 5)	Tacoma	C
WA	Fort Lewis Logistics Center	Tillicum	
WA	Hamilton Island Landfill (USA/COE)	North Bonneville	
WA	Hanford 100–Area (USDOE)	Benton County	
WA	Hanford 1100–Area (USDOE)	Benton County	
WA	Hanford 200–Area (USDOE)	Benton County	
WA	Hanford 300–Area (USDOE)	Benton County	
WA	Jackson Park Housing Complex (USNAVY)	Kitsap County	
WA	McChord Air Force Base (Wash Rack/Treat)	Tacoma	
WA	Naval Air Station, Whidbey Is (Seaplane)	Whidbey Island	
WA	Naval Air Station, Whidbey Island (Ault)	Whidbey Island	
WA	Naval Undersea Warfare Station (4 Areas)	Keyport	
WA	Old Navy Dump/Manchester Lab (USEPA/NOAA)	Manchester	
WA	Port Hadlock Detachment (USNAVY)	Indian Island	
WA	Puget Sound Naval Shipyard Complex	Bremerton	
WV	Allegany Ballistics Laboratory (USNAVY)	Mineral	
WV	West Virginia Ordnance (USARMY)	Point Pleasant	S
WY	F.E. Warren Air Force Base	Cheyenne	

(a) A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).

[FR Doc. 95–10156 Filed 4–24–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
April 25, 1995

Part VI

Department of Housing and Urban Development

24 CFR Part 215, et al.

Treatment of Holocaust Reparation Payments in Assisted Housing; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 235, 236, 280, 813, 913, and 950

[Docket No. N–95–3900; FR–3856–N–01]

Treatment of Holocaust Reparation Payments in Assisted Housing Programs: Notification of Affected Individuals

AGENCY: Office of the Secretary, HUD.

ACTION: Notification of policy.

SUMMARY: Before April 23, 1993, the Department of Housing and Urban Development counted Holocaust reparation payments made by foreign governments as income in its means-tested rental housing assistance programs. This policy may have caused some applicants to be denied admission to assisted housing, and some residents of the housing to pay a higher contribution to rent, because these payments were included in their income.

This document announces that the Department will attempt to provide relief to individuals adversely affected by this policy. As described more fully below, the Department will attempt to inform those who were denied eligibility of their potential current eligibility for rental assistance. For those whose rents were increased, the Department will attempt to find an administrative way to recompense them for the increased rent they paid.

The policy announced in this document applies to all initial and continuing income determinations that were conducted before April 23, 1993. The policy also applies to the Section 235 Homeownership Program. Members of the public who believe they may qualify for relief are encouraged to contact the appropriate Departmental official listed below for more information. It should be noted that in some cases, recompense may not be possible without further congressional action.

FOR FURTHER INFORMATION CONTACT: *For Public and Indian Housing programs*: Contact Sherone Ivey, Acting Director, Office of Assisted Housing, Room 4206, telephone (202) 708–0744 (voice), (202) 708–9300 (TDD).

For the Rent Supplement Program; the Section 236 Program (including RAP); Section 8 Programs (including New Construction, Substantial Rehabilitation, State Agency Set-Aside, and Loan Management Set-Aside); the Section 515/8 Farmers Home Set-Aside Program, and the Nehemiah Housing Opportunity Grants Program: Contact Barbara Hunter, Acting Division Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180, telephone (202) 708–3944 (voice), (202) 708–4594 (TDD).

For the Section 202 and Section 202/8 Housing for the Elderly and Handicapped Programs; the Section 202 Supportive Housing for the Elderly Program; the Section 811 Supportive Housing for Persons with Disabilities Program; and the HOPE 2 Program: Contact Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Room 6130, telephone (202) 708–4542 (voice), (202) 708–4594 (TDD).

For the Section 235 Homeownership Program: Contact Joseph Bates, Director, Single Family Servicing Division, Room 9178, telephone (202) 708–1672 (voice), (202) 708–4594 (TDD).

For the HOPE 3 Program: Contact Clifford Taffet, Program Policy Division, Office of Community Planning and Development, Room 7168, telephone (202) 708–3226 (voice), (202) 708–2565 (TDD).

The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. The telephone numbers listed above are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements in this notice have been submitted to the Office of Management and Budget (OMB) for review. These information collection requirements are not effective until such time that OMB grants its approval. The approval numbers will be published in the **Federal Register** through separate notice.

Background

The Department provides means-tested housing assistance to eligible low-income families under a variety of programs. Rental assistance programs include the following: Rent Supplement,[1] Section 236,[2] Section 8 and Public and Indian Housing,[3] and Supportive Housing for Elderly[4] and Disabled Persons.[5] Programs using Section 8 assistance include Section 8 new construction, substantial rehabilitation, certificate/voucher, State Housing Agency, Farmers Home Administration, moderate rehabilitation, loan management, property disposition, and Section 202/Section 8. The Department also provides means-tested subsidies in the Section 235 Homeownership Program.[6]

In these programs, the Department takes family income into account in determining initial program eligibility, and uses periodic income reexaminations to determine the level of benefits to be provided eligible families. The Department also uses family income to determine eligibility for the HOPE Programs (1, 2, and 3),[7] the Nehemiah Housing Opportunity Grants program,[8] and the Section 23 Housing Assistance Payments Program.[9]

In establishing criteria for calculating family income, the Department historically counted the full amount of periodic payments received by program applicants and participants.[10] Since reparation payments made by foreign governments in connection with the Holocaust are made periodically (normally on a monthly basis), they were traditionally included in family income.

Almost two years ago, the Department reversed this position. On March 24, 1993, the Department published a final rule in the **Federal Register**[11] that excluded reparation payments, paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era, from family income under the rental assistance programs described above.[12]

[1] Section 101 of the Housing and Urban Development Act of 1965.

[2] Section 236 of the National Housing Act.

[3] The United States Housing Act of 1937.

[4] Section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act.

[5] Section 811 of the Cranston-Gonzalez National Affordable Housing Act.

[6] Section 235 of the National Housing Act. New business under this program was terminated effective October 1, 1989, by section 401(d) of the Housing and Community Development Act of 1987.

[7] Title IV of the Cranston-Gonzalez National Affordable Housing Act.

[8] Title VI of the Housing and Community Development Act of 1987, repealed by section 289(b) of the Cranston-Gonzalez National Affordable Housing Act.

[9] Section 23 of the U.S. Housing Act of 1937, repealed by section 201(a) of the Housing and Community Development Act of 1974.

[10] See the following regulations, as they existed before April 23, 1993: Rent Supplement—24 CFR 21 5.21(b)(7); Section 236—24 CFR 236.3(b)(4); Section 8—24 CFR 813.106(b)(4); and Public Housing—24 CFR 913.106(b)(4).

[11] 58 FR 15773, effective April 23, 1993.

[12] This final rule did not include amendments to the Section 235 regulations. The Department intends to implement the exclusion of reparation payments from income in this program through administrative instructions. Anyone who believes his or her reparation payments were included in

The Department took this action voluntarily, under its general authority to define ''income'' for the programs involved. As indicated in the preamble to the final rule, the Department believes that the Holocaust—in both its scope and severity—represents a unique situation, and that payments by foreign governments intended to atone for atrocities committed during the Nazi era should not be taken into account with respect to the housing assistance programs involved.

The final rule was *prospective* only. It applied to all initial and continuing income determinations conducted *on or after its effective date*—April 23, 1993. It also made clear that any assisted housing residents who had been asked to repay assistance because of their failure to include past reparation payments in income would be excused from further repayment beginning on April 23, 1993.

The rule did not, however, provide *retroactive* relief to those for whom reparation payments were included in income pursuant to initial and continuing income determinations conducted *before* April 23, 1993. The preamble to the rule indicated that the Department was reviewing the feasibility, practicality, and desirability of making the new policy retroactive, and would advise the public of its conclusions in a later **Federal Register** publication.

This notice announces that as a result of this review, the Department will take steps to provide appropriate retroactive relief where possible under current law. This notice is part of an outreach effort to identify individuals who may be eligible for this relief. This outreach will include, among other efforts, contacting Survivors' groups. The relief has two aspects.

1. *Those who were denied eligibility in the Department's assisted rental housing programs as a result of including reparation payments in family income.*

Section 1(d) of Pub. L. 103–286 (approved August 1, 1994) (42 U.S.C. 1437a note) requires any Federal agency that denied individuals eligibility for means-tested programs by reason of counting reparation payments as income to make a good faith effort to notify them of their potential eligibility under the programs. This notice, and the outreach effort described above, constitute the Department's good faith effort to identify potential affected individuals.

The Department encourages anyone who believes that he or she was found to be income-ineligible for any of the above rental assistance programs by reason of counting reparation payments in income, to notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for the program involved. Consistent with section 1(d) of the above statute, the Department will determine the individual's current potential eligibility for rental housing assistance.

2. *Those whose rents under the Department's assisted rental housing programs were increased as a result of including reparation payments in family income.*

The Department will, on a voluntary basis, attempt to repay the amount of any such rent increases and any repayments made by individuals to the extent permissible. Since there is no specific appropriation for these purposes, the critical question in determining whether the Department can provide this relief is the availability of the necessary funding under the particular program involved.

a. *Budget-based Section 202/8 projects.* Based on the circumstances of one claimant, the Department has determined that there are funds to recompense residents of Section 202/Section 8 elderly projects that receive rent adjustments on the basis of project budgets, rather than through Annual Adjustment Factors. To be eligible, the individual:

—must be a current resident of the project, and
—must have resided in a Section 202/8 project during the period in which the reparation payments were counted as income.

For any eligible residents of these projects, the Department will attempt to repay, or offset against any increased future tenant rental payments, the full amount of any increased rental payments stemming from the inclusion of reparation payments in income. The Department will also attempt to repay the full amount of any repayments of assistance paid by tenants because of their failure to include past reparation payments in income. The Department encourages residents of these projects who believe they may qualify for recompense to contact the individual listed under Section 8 project-based programs in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

b. *Other projects.* Similarly, the Department encourages current residents of other assisted projects who resided in the project during the period in which the reparation payments were counted as income to contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice for the appropriate program. Public housing authorities (PHAs) with locally-owned projects receiving operating subsidies under the Performance Funding System may, after HUD review of the calculations, utilize the regulatory provision at § 990.110(g) to recalculate operating subsidy eligibility, and request current year funds to cover the payment of retroactive payments to eligible recipients. For other programs, the Department will determine the eligibility of the individual, as well as the availability of funds to provide the recompense administratively without the need for further congressional action. Since the Department's assisted rental housing programs use a variety of funding techniques, the ability to provide the necessary relief administratively, without the need for further congressional appropriation action, depends on the program involved.

It should be noted that section 1(e) of Pub. L. 103–286 also purports to provide retroactive relief for those whose rents were increased by reason of counting reparation payments. The relief is limited, however, to rental payments from February 1, 1993 through April 30, 1993. In addition, the authority to make any recompense under Pub. L. 103–286 is conditioned on approval in an appropriation Act. Since no such approval was provided, Pub. L. 103–286 may NOT be used as a source of recompensing eligible individuals.

In contrast, the Department's voluntary action announced in this notice is designed to provide full compensation not just for a three-month period, but for the entire time in which reparation payments were taken into account. It also provides a mechanism for recompensing at least some eligible claimants, without the necessity of further appropriation action. Any recompense that cannot be provided pursuant to the provisions set forth in this notice requires further congressional action.

3. *Those who were denied eligibility, or whose level of subsidy was determined, as a result of including reparation payments in family income in the Section 235 Homeownership Program.*

Although the Department did not include the Section 235 Homeownership Program in its March 24, 1993 final rule (58 FR 15773), the Department is including in its outreach

income on or after April 23, 1993 should contact the person identified above for this program.

effort those individuals who may have been affected in this program. Any such individuals should notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section for this program.

Other Matters

National Environmental Policy Act (NEPA)

This action is categorically excluded from the NEPA requirements at 24 CFR part 50 in accordance with 24 CFR 50.20(k), because it relates to an internal administrative procedure, the content of which does not constitute a development decision nor affect the physical condition of project areas or building sites.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this notice would 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. The notice simply announces the Department's intent to provide relief to those whose eligibility or rental payments under HUD's assisted rental housing programs were adversely affected by counting reparation payments as family income.

Executive Order 12606, The Family

The General Counsel, as the Designated Officer under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The notice simply announces the Department's intent to provide relief to those whose eligibility or rental payments under HUD's assisted rental housing programs were adversely affected by counting reparation payments as family income.

Dated: March 30, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–10087 Filed 4–24–95; 8:45 am]

BILLING CODE 4210–32–P

federal register

Tuesday
April 25, 1995

Part VII

Department of Housing and Urban Development

HUD Housing Counseling Agency; Inviting National, Regional, and Multi-State Nonprofit or Public Organizations to Apply for Approval; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing—Federal Housing Commissioner

[Docket No. N–95–3902; FR–3888–N–01]

Notice Inviting National, Regional, and Multi-State Nonprofit or Public Organizations To Apply for Approval as a HUD Housing Counseling Agency

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Application for approval of national, regional and multi-state nonprofits or public entities as HUD-approved housing counseling agencies.

SUMMARY: This Notice describes the criteria for approval by the U.S. Department of Housing and Urban Development (HUD) of national, regional, and multi-state nonprofit or public organizations as housing counseling agencies and sets forth the application approval process.

All organizations wishing to participate in HUD's FY '95 housing counseling program must first receive HUD approval as a housing counseling agency. Although HUD has an established process for approving local counseling agencies, FY '95 will mark the first year that HUD will approve national, regional, and multi-state organizations for participation in its counseling program. National, regional, and multi-state nonprofit or public organizations that apply for HUD approval under this Notice are not necessarily guaranteed HUD housing counseling funding for FY '95. However, the HUD approval process outlined in this Notice is a prerequisite to the application for FY '95 funding by national, regional, or multi-state nonprofit or public organizations. The NOFA announcing the availability of FY '95 funds is expected to be published at a later date.

DATES: Complete applications must be submitted for HUD approval no later than 4:30 p.m. e.s.t. on May 10, 1995. In order to be assured of eligibility for FY '95 funding, all applications for HUD certification must be physically received by this deadline date and hour by Emelda P. Johnson, Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9282, Washington D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Written inquiries about this Notice may be mailed or faxed to the attention of Marion F. Connell, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9282, Washington D.C. 20410; fax number (202) 708–4006. Telephone inquiries may be directed to (202) 708–0740 (voice) or (202) 708–4594 (TDD). Please note: these are *not* toll free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0261.

I. Purpose and Substantive Description

A. Authority and Purpose

Section 106 of the Department of Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) authorizes the Secretary of HUD to provide, or contract with public or private organizations to provide, counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. In accordance with its responsibilities under the Fair Housing Act and other Civil Rights laws, the Department requires housing counseling agencies to be familiar with these laws. Appropriations acts for the past several years have consistently provided funds for counseling and advice under Section 106 to current and prospective tenants and homeowners. Under the counseling program, HUD funds housing counseling agencies which offer a range of services to renters, first-time homebuyers, and current homeowners.

In order to participate in the HUD program, housing counseling agencies must first be approved by the Department. In previous fiscal years, HUD provided all of its housing counseling funding directly to local housing counseling agencies. The approval process for local housing counseling agencies requires that the local agency submit information documenting minimum levels of experience and technical expertise. Once approved, these local agencies are eligible to apply for HUD funding. Currently there are 661 HUD-approved local housing counseling agencies, of which 431 received funding in FY '94.

For FY '95, HUD will fund both local counseling agencies and national, regional, or multi-state nonprofit or public organizations. These national, regional, or multi-state nonprofit or public organizations (sometimes referred to as ''intermediaries'') will assist HUD to manage the use of housing counseling funds in a more efficient and effective manner. These organizations may use the HUD program to fund local affiliates which offer housing counseling services, and/or may provide counseling services directly to the public.

All national, regional, or multi-state organizations wishing to participate in the program must receive HUD approval before applying for funding. HUD will publish a separate NOFA announcing the availability of FY '95 housing counseling funding. In order to allow sufficient review time, the Department requires that all applications for approval as a HUD housing counseling agency be submitted by the date stated above. Organizations that are not HUD-approved as of the NOFA publication date will be ineligible to participate in the FY '95 program.

B. Applicability of Handbook

The Housing Counseling Program is generally governed by HUD Handbook 7610.1, REV–3. However, since the current version of that handbook did not contemplate the inclusion of national, regional, and multi-state housing counseling agencies, its provisions are hereby superseded with respect to this new category of participants. Although the handbook does not apply to this category of participants, these participants are responsible to provide, either directly or through their affiliates, housing counseling services of the same quality as are provided by the HUD-approved independent housing agencies that are subject to the provisions of the handbook.

C. Eligible Applicants

(1) Type of Organization

In order to apply for HUD approval under this Notice, an organization must be a nonprofit or public agency that is authorized to provide housing counseling; and a national, regional, or multi-state organization. (Local agencies may continue to apply for approval at the appropriate HUD Field Office under existing procedures.) For purpose of determining the type of organization, national, regional, and multi-state organizations are defined as follows:

• National organizations are entities that have branches or affiliates covering more than one regional area of the country.

• Regional organizations serve a ''regional area'' such as the Southwest or Northeast. The regional organization's operational boundaries need not conform precisely to the typically accepted definition of a particular area.

• Multi-state organizations serve two or more states. The states need not be contiguous and the operational boundaries of the organization need not precisely conform to State boundaries.

(2) Civil Rights Compliance

The organization may have no outstanding finding of a violation of: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR Part 1); the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR Part 107); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8); Title II of the Americans with Disabilities Act of 1990 and applicable regulations at 28 CFR Part 36); the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR Part 146); Executive Order 11246 and all regulations issued pursuant thereto (41 CFR Chapter 60–1); and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and regulations pursuant thereto (24 CFR Part 135).

II. Application Process

A. Submitting an Application Package

The signed original and one signed copy of the application information must be submitted in a sealed envelope addressed to Emelda P. Johnson, Deputy Assistant Secretary for Single Family Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 9282, Washington D.C. 20410. Envelopes should be clearly marked, ''Housing Counseling Application''. Applicants should retain a copy of the application for their records. Where the application requests submission of existing legal or corporate documents, send only a copy—not the original document.

Applications must be physically received by no later than the date stated above in the ''Dates'' section. Applicants have the option of submitting their response to sections B 4–9 below after receiving preliminary approval. In that case, the first phase of the application must be submitted within five working days of publication of this Notice. HUD will respond by telephone within two working days of receipt of the first phase. The second phase of the application must then be received by the date stated above in the ''Dates'' section of this Notice. HUD recommends a one-step application process in the interest of timeliness and efficiency for the applicant but is making the two-step option available in conformance with previous practice.

The above stated application deadline is firm as to its date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this policy into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Facsimile (FAX) applications are not acceptable and will not be reviewed.

B. Application Content

Applicants must submit an application following the format prescribed in forms HUD–9900C and HUD–9900D to HUD by the date and time stated above. After review and approval of this application, HUD will send the applicant a letter stating that the organization is recognized as a HUD-approved housing counseling agency with a copy of HUD's standard approval certificate. The following sections of this Notice state the submission requirements for each portion of the application package.

All application materials should be on 8.5×11″ paper and should be typewritten or produced using other methods of wordprocessing. For identification purposes, assure that the name and complete address of the applicant appear on the top or bottom of each page. Use the outline format specified below and do not deviate or add or skip sections. Applicants should ensure that submitted materials are clear and concise.

National, regional, or multi-state organizations seeking HUD approval as a housing counseling agency must submit the following information as part of their application package:

(1) Transmittal Letter

In the transmittal letter, or cover sheet, to the application, clearly list the following information about the applicant:

a. Official name of organization;

b. Acronym, if any, for official name;

c. Address of main office; (If the applicant will use a location other than the main office for counseling coordination activities, please indicate this address as well.)

d. Main office telephone and FAX number. Also, toll free 800 # if applicable;

e. Name and title of chief operating officer;

f. Counseling program administrator's name and title;

g. The name, title, and telephone number of the person to contact regarding the organization's application.

The cover sheet or transmittal letter should be signed and dated by the person authorized by the applicant's governing body to submit this application. Beneath the signature and date, type the signer's name and title and affirmatively state that this person is authorized to submit the application.

(2) Executive Summary

Provide a one page summary of the organization's proposed housing counseling plan and describe how this plan meets the housing needs and problems of the organization's targeted population. Also note how the organization's resources will enable it to implement its plan.

(3) Type of Organization

a. National Organizations: Note the number of the States where housing counseling services will be provided. State the number of offices (main, branch, or affiliate) where these services will be provided.

b. Regional Organizations: State the name of the region where services will be provided. Note the number of the States which are included in the organization's region. State the number of offices (main, branch, or affiliate) where these services will be provided.

c. Multi-State Organizations: List the names of the States where housing counseling services will be provided. For each state, list the number of offices (main, branch, or affiliate) where these services will be provided.

(4) Community Base

a. Describe the applicant's experience and record of achievement in housing counseling during the past year. This experience should be specific to the communities where the organization proposes to offer housing counseling services.

b. List the following information for all affiliates or branch offices:

• Official Name.

• Address, including ZIP code.

• Mailing address (if different).

• Telephone and FAX number (if a toll free number is available please note that number as well).

• Name, title, and telephone number of the person in charge of the housing counseling program.

Please note: The information requested in this section (b.) may alternatively be submitted at the time a HUD-approved organization applies for funding. HUD recognizes that some national groups are still forming their counseling network.

c. If housing counseling services will be offered to non-English speaking persons, please attach evidence of staff members who fluently speak the clients' native language.

(5) Target Area

a. Describe the organization's proposed target area for housing counseling, including: size of population; racial and ethnic make-up of the population; socio-economic factors; and age and condition of the housing stock. Do not exceed two typewritten pages.

b. State why the organization selected this particular target area and why the organization believes it is particularly well situated to service this area. Do not exceed one typewritten page.

c. If other housing counseling agencies serve this same target area, describe why the applicant believes that it should also target this area. Do not exceed one typewritten page.

d. List the U.S. Postal Service ZIP codes for all areas serviced by the main office and its affiliates or branch offices over the past 12 months.

(6) Housing Needs and Problems

Describe the housing needs and problems of the target area serviced by the organization. Include special needs and problems, such as those related to available housing stock, low income or poverty, homelessness, language, persons with disabilities, and ethnic, minority, and racial factors.

(7) Resources

Submit a narrative statement of the resources the applicant has on-hand as of the submission date of this application. ''On-hand'' is defined as the staff, facilities, and funding which the applicant either possesses or has a written commitment to receive but does not include amounts which the organization hopes to receive or plans to seek. Break out the statement of resources by staff, facilities, and funding categories:

a. Staff.

• Attach a brief resume for each person who will oversee the housing counseling program at the applicant's headquarters. Each resume should indicate position title and duties.

b. Facilities.

• Provide a general description of the applicant's facilities. State whether privacy and accessibility for persons with disabilities is provided at each affiliate or branch location. An opportunity for privacy during consultation and reasonable accommodations for accessibility are required at each location. If access for persons with disabilities, including persons with mobility, hearing, visual, and other disabilities, is not possible at all sites, indicate how counseling will be provided to persons with disabilities as needed. Also state whether public transportation is available within a 15 minute walk of each housing counseling location, to ensure accessibility of all populations needing to be served.

c. Funding.

• List the sources and amount of funds available ''on-hand'' within the initial 12 month period of working as a HUD-approved housing counseling agency. The Department will give priority consideration to organizations that can demonstrate the ability to leverage funding received from HUD.

• Submit a copy of the organization's current housing counseling budget and indicate the sources of funds for that budget.

(8) Community Resources

List the names of the types of community resources from which you expect your branches or affiliates to receive services or other forms of assistance for clients either at your facilities or those of the resource. Community resources consist of the types of local, state, and federal public and private resources with whom the applicant expects branches or affiliates to have firm working relationships. This may also include other HUD-approved housing counseling agencies.

(9) Housing Counseling Plan

Describe in detail the housing counseling which will be provided by the applicant organization. This plan should take into account the resources, housing needs and problems, and target areas identified by the applicant. Be concise.

(10) Legal Status

Submit a copy of the document which verifies that the applicant is a nonprofit organization, such as a copy of a 501 (c) determination from the IRS, or official document duly authorizing a public agency. This document must include the official name, address, and telephone number of the entity that granted this status. HUD assumes, and the applicant assures, that all affiliates and branch offices are also nonprofit organizations or public agencies.

(11) Charter

Attach a copy of the organization's document that authorizes housing counseling activities. This document might include the charter, by-laws, board resolution, etc.

(12) Audit Report

Attach a copy of an audit report conducted within the 12 month period prior to the date of the application. HUD assumes and the applicant assures that affiliates and branch offices have also been audited within the last 12 months. If an audit has not been conducted within the last 12 months, certification must be received that one will be immediately undertaken, and a copy provided to HUD when completed. Regardless of how recently the last audit was done, a copy of the organization's most recent audit must be immediately submitted. The applicant must also assure that each affiliate or branch has a functioning management system in accordance with generally accepted accounting standards.

(13) Assurances and Signatures

Affirmatively state that the applicant will comply with the following requirements:

a. Administer its housing counseling program in compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and applicable provisions of the Americans with Disabilities Act of 1990.

b. Provide its housing counseling services without subagreements with agencies other than the stated affiliates and branches or other HUD-approved housing counseling agencies. Written agreements must be executed with affiliates or branches delineating the respective responsibilities of the various organizations party to the agreement.

c. Represent its clients without any conflicts of interest on the part of the applicant or its staff that might compromise the agency's ability to represent fully and impartially the best interests of the client.

d. Meet all local, State, and federal requirements necessary to provide the applicant's housing services. Agency staff must possess a working knowledge of all current laws and ordinances that relate to housing counseling, such as debt management and a range of mortgage loan products available in their area.

e. Comply with fee guidelines set forth in HUD's Handbook 7610.1 REV–3, if the applicant plans to charge a fee to some of its clients.

C. Corrections to Deficient Applications

After the deadline, applicants that met the deadline may cure only non-substantive, technical deficiencies in their application. Applicants have a 14 calendar day ''cure period'' to correct deficiencies in the application that are not integral to HUD's review of the application. Applicants have 14 days from the date HUD notifies the applicant of any problem to submit the appropriate information to HUD. Notification of a technical deficiency may be in writing or by telephone. If the notification is by telephone, a written confirmation will be transmitted by HUD to the applicant. Such deficiencies should be cured prior to application for HUD funding; however, exceptions may be made if circumstances warrant.

III. Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Notice of Funding Availability published in connection with the Housing Counseling program on March 21, 1994 (59 FR 13366). That Finding is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this notice does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This notice only affects multi-state, regional and national nonprofit or public organizations who want to apply to participate in HUD's program to provide housing counseling services, assisting and advising housing consumers about how to develop competence and responsibility in meeting their housing needs.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice has potential significant impact on family formation, maintenance, and general well-being only to the extent that the entities who qualify for participation in HUD's housing counseling program under this notice will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the potential impact on the family is considered beneficial, no further review under the Order is necessary.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.169.

Authority: 12 U.S.C. 1701x; 42 U.S.C. 3535(d).

Dated: April 13, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–10140 Filed 4–24–95; 8:45 am]

BILLING CODE 4210–27–P

federal register

Tuesday
April 25, 1995

Part VIII

Department of Energy

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA13

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations regarding access to classified matter and special nuclear material which establish the Personnel Security Assurance Program (PSAP). The PSAP was created to assure the reliability of individuals in certain positions, referred to as PSAP positions for purposes of this rule. The Department now amends this rule to include references to the drug testing protocols used in the PSAP and to reflect the Government-wide requirements for a standard background investigation. This change will reduce the scope of the background investigation for the PSAP, and thereby reduce cost and intrusiveness.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Lynn Gebrowsky, Personnel Security Policy Branch, Office of Safeguards and Security, Office of Security Affairs, Department of Energy, (301) 903–3200, or Stephen P. Smith, Office of the Assistant General Counsel for General Law, Office of the General Counsel, Department of Energy, (202) 586–8618.

SUPPLEMENTARY INFORMATION:

I. General

A proposed rule to amend 10 CFR part 710, subpart B, by the addition of certain drug and alcohol testing provisions, was published in the **Federal Register** on March 8, 1991 (56 FR 10075). Comments received in response to that publication are discussed in this final rule.

Four written comments were received on the proposed rule. Most of the comments concerned the provision in the proposed rule for alcohol testing in cases of occurrence or reasonable suspicion. This provision has been removed from the final rule pending a government-wide decision on the subject of alcohol testing. In consequence, none of the comments received in reference to alcohol testing will be addressed at this time.

The detailed drug testing protocols put forward in the proposed rule have been removed as a consequence of the publication of 10 CFR part 707, ''Workplace Substance Abuse Programs at DOE Sites,'' (57 FR 32652) which established those protocols for all drug testing conducted on contractor populations at sites operated under the authority of the Atomic Energy Act of 1954, as amended. The drug testing requirements set out in 10 CFR part 707 serve as the drug testing element for contractors in the PSAP. Drug testing procedures for Federal employees in the PSAP are found in Departmental directives.

One commenter felt that the most recent body of case law in the area of drug and alcohol testing for occurrence and reasonable suspicion had not been examined carefully in its applicability to the PSAP. DOE responds that it is difficult to anticipate the development of the law in such a relatively new field as drug testing, but the relevant case law has been adequately taken into account. The judicial examination of the issues surrounding drug testing has increased greatly over the past 5 years, stimulated by the growing realization of the safety, security, and performance threats represented by employee drug use. Further growth accompanied the issuance of Executive Order 12564 and the concomitant expansion of private sector testing programs.

The threshold issues of constitutionality, with particular reference to the Fourth Amendment, have been thoroughly discussed by the courts. The cases now generally have moved on to matters of detail in the actual conduct of the tests, which have been determined to be constitutionally permissible under the proper circumstances. Throughout the time that this rule (and 10 CFR part 707, which now promulgates the drug testing procedures) has been under development, DOE has been in contact with other Federal agencies having a responsibility for oversight of drug testing procedures. The Department is confident that this rule, relying upon the provisions of 10 CFR part 707 and DOE policies implementing Executive Order 12564, will bear scrutiny under the presently existing case law.

That commenter also expressed uneasiness over the evaluation of ''applicants'' under the PSAP. No evaluation, other than that which might be understood by drug testing, is addressed in this rule. However, in the proposed rule of March 8, 1991, the issue was considered and the phrase ''tentatively selected applicants'' employed to narrow the requirement for evaluation from all applicants to those selected for the job but not yet performing the duties of the job.

More specific and detailed comments are addressed below.

II. Comments Received and DOE Responses

A. Americans With Disabilities Act of 1990

One commenter stressed that any assessments of individuals under the PSAP need to be consistent with the Americans with Disabilities Act (ADA), which took effect July 26, 1992. Under this act, reasonable accommodation must be afforded individuals with disabilities who are ''otherwise qualified'' for the job. An individual with a disability is defined as one who has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment. In order to be considered ''otherwise qualified,'' a person must be able to meet all of a program's requirements in spite of his handicap. *Southeastern Community College* v. *Davis*, 442 U.S. 397, 406 (1979).

The overriding qualifications for a PSAP position are trustworthiness, reliability and sound judgment (see subpart A of part 710). All evaluations under PSAP are directed toward that determination. The U.S. Court of Appeals for the Second Circuit has held that having poor judgment and exhibiting irresponsible behavior, while it may disqualify an applicant from a job, is not such a substantial limitation in a major life activity that it qualifies as a handicap under the Rehabilitation Act. *Daley v. Koch*, 892 F.2d 212 (2d Cir., 1989).

It is certainly possible for an individual with a disability, either physical or mental, to hold a PSAP position, provided the individual meets the requirements of the program. Current illegal drug users and alcoholics who cannot safely perform their jobs are not protected by the ADA.

B. Guidelines of the Department of Health and Human Services

It was suggested that the PSAP rule (and, by inference, the Workplace Substance Abuse rule, which provides the drug testing procedures for the PSAP) could not impose the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' issued by the Department of Health and Human Services (HHS), on contractors without further clarification from the DOE. This concern resulted from an apparent misinterpretation of references to the HHS Guidelines in the proposed rule. Those references were specific and

limited. The text in question is now covered by 10 CFR part 707; however, to respond fully to the commenter, the following is provided:

In paragraph 710.59(e)(1) (superseded by § 707.12(a) of 10 CFR part 707) there was a requirement that laboratories conducting drug testing for the PSAP use the cutoff levels in the HHS Guidelines for determining whether a test is negative or positive. The paragraph continued with the requirement that any laboratory utilized for PSAP drug testing be certified by the Department of Health and Human Services. Paragraph 710.59(e)(3) (superseded by § 707.12(b)(2)) stated that the amount of urine collected in a specimen will be at least 60 milliliters, in accordance with the HHS Guidelines. This statement provided the rationale for the amount specified (i.e., it reflected the widely used and accepted standard). Under 10 CFR part 707, the requirement for a specific volume is deleted and the site collection person is directed to ascertain that a sufficient amount of urine is collected for an initial test, a confirmatory test, and a retest. Paragraph 710.59(f)(1) (superseded by § 707.13(a)) indicated that the gas chromatography/mass spectrometry method would be used in confirmatory tests and directed the reader to certain paragraphs in the HHS Guidelines for information on the procedure. Paragraph 710.59(f)(2) (superseded by § 707.13(b)) directed the medical review officer to make any determinations of substance abuse in accordance with the criteria provided in the Medical Review Officer Manual issued by HHS.

It was never intended that the HHS Guidelines be adopted in their entirety by contractors under the PSAP. Only those sections of the Mandatory Guidelines and the Medical Review Officer Manual referenced in 10 CFR part 707 apply to the PSAP. An inadvertent reference was made in § 710.59(e)(3) to a ''permanent record book,'' which reflects an HHS requirement. This reference has been deleted, as the paragraph was superseded by the provisions of 10 CFR part 707, which replaces the requirement for a permanent record book with the use of a multi-part specimen chain of custody form.

C. Drug Testing

Two commenters took exception to the requirement in paragraph 710.59(b) that employees who have not undergone a random drug test for a given year at the time of that year's medical examination be tested for the use of illegal drugs during the medical examination. It was observed that, under the procedures used in certain facilities, this would prevent the test from being unannounced. The intent of the statement was to offer a method of assuring that all individuals in the PSAP were tested annually. There are any number of mechanisms through which the testing can be conducted on an unannounced, random basis, with every individual in the population being tested at least annually. The sentence is therefore removed and the precise mechanism of testing administration left to the contractor, with the stipulation that any method used result in random, unannounced, annual tests.

D. Training

One commenter felt that the supervisor training referred to in the preamble to the proposed rule implied that training would be incorporated as a requirement in the final rule without due opportunity for public comment. This was never intended. The reference to training was solely to provide information to contractors on the assistance available through the DOE for implementation of the PSAP. This final rule contains no training requirements.

III. Changes From Proposed Rule

In addition to the removal of alcohol testing requirements and those drug testing protocols now found in 10 CFR part 707, there has been a revision in the security requirements, based on recent personnel security research findings and on comments from within the Department of Energy. Specifically, in § 710.60(c), the investigative requirement is now a single-scope background investigation, the standard used by the Department for the granting of a Q access authorization. In keeping with that standard, § 710.60(e) now requires a periodic reinvestigation in accordance with those procedures used to maintain a Q access authorization. Paragraph 710.60(d) is changed to eliminate the annual national agency check (NAC) and to clarify that the yearly update of the SF–86 is for Part II of that form only. The strength of the PSAP is in its continuing evaluation of covered individuals, and while its investigative elements are important, it is felt that there is little benefit gained by a 15-year scope investigation and annual NAC, relative to the cost incurred.

In § 710.54, Definitions, the definition for ''drug certification'' has been deleted, as this administrative instrument is not a form or procedure of the PSAP.

A non-substantive change has been made to §§ 710.50(a) and 710.55, regarding the positions covered by the Personnel Security Assurance Program. The second category of positions in each of those paragraphs has been revised to refer to positions ''which afford unescorted access to the control areas of a nuclear material production reactor,'' instead of positions ''identified as nuclear material production reactor operators.'' This change makes the second category of covered positions grammatically parallel with the first category. The Department does not intend any change in the scope of the second category of covered positions.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of the said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned or leased sites and their subcontractors, and will not have significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

There is no impact on the environment under today's rule. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

Today's rule has been reviewed in accordance with the Paperwork Reduction Act and has been determined to contain no collection of information requirements other than those already approved under OMB Control Number 1910–1800.

E. Federalism Effects

The principal impact of today's rule will be on government contractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under E.O. 12612 is required.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in sections 2(a) and 2(b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certified that today's regulatory action meets the requirements of sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, classified information, government contracts, government employees, nuclear materials.

Kenneth E. Baker,

Acting Director, Office of Nonproliferation and National Security.

For the reasons set forth in the preamble, part 710 of title 10 of the Code of Federal Regulations is amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: Sec. 145, 68 Stat. 942 (42 U.S.C. 2165) and sec. 161, 68 Stat. 948 (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended, 3 CFR Chap. IV; sec. 104(c), 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815); secs. 641, 644, 646, 91 Stat. 598, 599 (42 U.S.C. 7251, 7254, and 7256).

2. Subpart B of part 710 is revised to read as set forth below:

Subpart B—Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position

General Provisions

710.50 Purpose.
710.51 Scope.
710.52 References.
710.53 Policy.
710.54 Definitions.

Procedures

710.55 Designation of PSAP positions.
710.56 Program process.
710.57 Supervisory review.
710.58 Medical assessment.
710.59 Management evaluation.
710.60 DOE security review and clearance determination.

Subpart B—Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position

General Provisions

§ 710.50 Purpose.

(a) This subpart establishes the policies and procedures for implementing the Department of Energy (DOE) Personnel Security Assurance Program (PSAP) for individuals in positions:

(1) Which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM);

(2) Which afford unescorted access to the control areas of a nuclear material production reactor; or

(3) With the potential for causing unacceptable damage to national security.

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part.

§ 710.51 Scope.

The criteria and procedures establishing the Personnel Security Assurance Program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

§ 710.52 References.

(a) Atomic Energy Act of 1954, as amended, section 11, ''Definitions''; section 141, ''Policy''; section 143, ''Department of Defense Participation''; section 145, ''Restrictions''; section 161 b., ''General Provisions''; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as appendix A to subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, ''Security Requirements for Government Employment,'' 10865, February 20, 1960, ''Safeguarding Classified Information Within Industry,'' and 12564, September 15, 1986, ''Drug-Free Federal Workplace,'' all as amended.

(c) 10 CFR part 707, ''Workplace Substance Abuse Programs at DOE Sites,'' which requires DOE contractors to establish workplace substance abuse prevention programs, including urine drug testing for individuals who occupy sensitive positions such as those requiring a PSAP access authorization.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department of Energy, Washington, DC 20585, Attention: Directives Distribution.

§ 710.53 Policy.

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, substance abuse, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 Definitions.

As used in this part:

Contractor means the contractor and subcontractors at all tiers.

Direct access means access to Category I quantities of SNM which would permit an individual to remove, divert, or misuse that material in spite

of any controls that have been established to prevent such unauthorized actions.

Illegal drugs means a controlled substance included in Schedules I, II, III, IV, or V, as defined by 21 U.S.C. 802(6), the possession of which is unlawful under chapter 13 of that title. The term ''illegal drugs'' does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law.

Management official means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for PSAP positions.

Occurrence means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

(1) Injury or fatality to any person involving actions of a Department of Energy contractor employee.

(2) Involvement of nuclear explosives under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or significant damage to property.

(3) Accidental release of pollutants which results or could result in a significant effect on the public or environment.

(4) Accidental release of radioactive material above regulatory limits.

PSAP Approving Official means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, ''PSAP Management, Medical, and Security Report'' as part of the DOE security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of subpart A of this part.

PSAP position means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, affords unescorted access to nuclear material production reactor control areas, or with the potential to cause unacceptable damage to national security.

Reasonable suspicion means a suspicion based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in part 707 of this chapter.

Security concern means the presence of information, regarding an individual applying for or holding a PSAP position, that may be considered derogatory under the criteria in subpart A of this part.

Selecting official means the management official responsible for making the final employment decision regarding an individual seeking a PSAP position.

Site occupational Medical Director means a physician responsible for the overall direction and operation of the occupational medical program at a particular site.

Supervisor means an individual who has direct oversight and responsibility for a person holding a PSAP position.

Unacceptable damage means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

Procedures

§ 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that afford direct access to the control areas of a nuclear material production reactor.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are designated by the Director, Office of Safeguards and Security, DOE.

§ 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this subpart.

(b) The PSAP involves four components: Supervisory review: Medical assessment; management evaluation; and security determination. A DOE determination to grant initially and to continue annually an individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance with the criteria in subpart A, § 710.8 of this part.

§ 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants tentatively selected for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF–86, OMB Control No. 3206.007, ''Questionnaire for Sensitive Positions'' of an applicant tentatively selected for a PSAP position and an annual update of the ''Questionnaire for Sensitive Positions,'' Part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being selected for a PSAP position, any tentatively selected applicant must undergo a pre-employment suitability determination as defined by 48 CFR 970.2201. For DOE employees, this pre-employment check must comply with the requirements established by the Office of Personnel Management in part 731 of title 5, Code of Federal Regulations. For contractor employees, this pre-employment check must comply with the requirements established by the DOE in section 970.2201(b)(1)(ii) of title 48.

(d) Each applicant tentatively selected for a PSAP position and each individual occupying a PSAP position but not a yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgements, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual, occupying a PSAP position but not yet holding a PSAP access authorization, to complete these documents may prevent DOE from reaching an affirmative finding required for granting or continuing PSAP access authorization. An effort shall be made to reassign that individual to a position not requiring a PSAP access authorization. For purposes of this section and all sections of this rule that relate to reassignment from PSAP duties, any Federal employee will be immediately removed from PSAP duties. The affected employee's supervisor may reassign the

employee or realign the employee's current duties. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.

(e) Applicants tentatively selected for PSAP positions and each individual occupying a PSAP position, but not yet holding a PSAP access authorization, shall undergo testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, or Part 707 of this chapter, which establish workplace substance abuse programs for DOE and contractor employees respectively. A determination of the use of illegal drugs, based on a drug test, shall result in termination of consideration for the PSAP access authorization. An employee who has been determined to have used illegal drugs, based on a drug test, shall be immediately reassigned from the PSAP duties and processed under the provisions of Subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns, resulting from his or her review, to the appropriate management official.

(g) Annual review. Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate information relevant to security. The supervisor shall report any security concerns, resulting from his or her review, to the appropriate management official.

(h) Recognition of security concerns and unusual Conduct. In order to facilitate early recognition of an individual who represents a possible security concern, individuals who, in the judgment of the responsible supervisor, exhibit unusual conduct shall be referred to the site Occupational Medical Director, who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) Temporary reassignment to non-PSAP duties. Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual, with the recommendation of the site Occupational Medical Director or the PSAP Approving Official, may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-cleared employee is temporarily reassigned to non-PSAP duties, the supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

§ 710.58 Medical assessment.

(a) *The medical examination.* The purpose of the PSAP medical examination is to ensure that an applicant tentatively selected for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) *When performed.* The medical assessment is performed initially upon applicants tentatively selected for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) *Contents of medical assessment.* The medical assessment shall include: A comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) *Examination for use of alcohol habitually to excess.* The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) *Diagnosis.* Employees in, or applicants tentatively selected for, a PSAP position shall be evaluated for the use of alcohol habitually to excess. Those employees diagnosed currently to use alcohol habitually to excess shall be temporarily reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) *Examination for the cause of reported unusual conduct.* Upon referral of a PSAP-cleared employee by a supervisor for observed unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) *Report of occupational Medical Director.* Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) *Temporary restrictions on a PSAP position.* In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report these restrictions immediately, in writing, to the appropriate management official who shall immediately notify the appropriate PSAP Approving Official. Removal of restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) *Sick leave from a PSAP position.* PSAP-cleared employees who have been on sick leave for five or more consecutive work days are required to report in person to the site Occupational Medical Director before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational Medical Director for written recommendation to return to normal duties after any period of sick leave.

§ 710.59 Management evaluation.

(a) *Evaluation components.* A management evaluation based upon a careful review of the results of the

supervisory review, medical assessment, and drug testing of an individual in, or an applicant tentatively selected for, a PSAP position is required before that individual can be considered for an initial granting or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) *Drug testing component.* Drug testing for the use of illegal drugs, as required by the PSAP, shall be established to test all individuals in, or applicants tentatively selected for, PSAP positions. Testing shall be conducted in accordance with the DOE policies implementing Executive Order 12564, or part 707 of this chapter, which establish workplace substance abuse programs for DOE and contractor employees respectively. The program shall include unannounced annual drug testing and testing for occurrence or reasonable suspicion for all PSAP-cleared individuals. A PSAP-cleared individual who has been determined to have used illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(c) *Occurrence or reasonable suspicion testing component.* When a PSAP-cleared employee is involved in or associated with an occurrence requiring notification to the DOE or whose behavior creates the basis for a reasonable suspicion of substance abuse, the employee shall be tested for the use of illegal drugs. Drug testing shall be conducted in accordance with the provisions of the DOE policies implementing Executive Order 12564, or part 707 of this chapter, which establish workplace substance abuse programs for DOE and contractor employees respectively.

(d) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of illegal drugs shall be required to undergo evaluation and testing as prescribed in DOE drug-free workplace and substance abuse policies and by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(e) *Corporate policy.* Nothing in this subpart is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for the use of illegal drugs as a matter of corporate policy, so long as such policy is at least as effective as the requirements and procedures of this subpart.

§ 710.60 DOE security review and clearance determination.

(a) *When performed.* The final component of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) *The criteria.* The PSAP access authorization and adjudication shall be conducted in accordance with the criteria and procedures contained in relevant sections of this part.

(c) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires the applicant or employee to have a DOE Q access authorization, based upon a background investigation. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation and the information provided by management and medical sources.

(d) *Annual PSAP access authorization continuance.* Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a review of the individual's DOE personnel security file, and an updated SF–86, OMB Control No. 3206–007, ''Questionnaire for Sensitive Positions,'' Part II. The determination to continue the PSAP access authorization shall be based upon a review and any necessary adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with the criteria and procedures contained in relevant sections of this part.

(e) *Periodic reinvestigation.* The PSAP-cleared employee shall undergo periodic reinvestigation as required to maintain a Q access authorization. The determination to continue the PSAP access authorization shall be based upon a review of security information, including the results of the limited background investigation and the information provided by management and medical sources.

(f) *Processing under 10 CFR part 710, subpart A.* Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under subpart A, § 710.8 of this part. Any administrative review under the PSAP shall be conducted in accordance with the provisions and procedures in subpart A of this part.

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Tuesday
April 25, 1995

Part IX

Department of the Interior

National Park Service

36 CFR Part 13

National Park System Units in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC19

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes regulations to implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA). This action is necessary to establish procedures for administering the statutory rights and preferences established by section 1307 for certain persons to conduct revenue-producing visitor services in certain units of the National Park System located in the State of Alaska. Particularly, this rulemaking will provide guidance in the solicitation, award and renewal of Alaska visitor service authorizations.

DATES: Written comments will be accepted through June 26, 1995.

ADDRESSES: Comments should be addressed to: Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Docket 1307, Anchorage, AK 99503–2892.

FOR FURTHER INFORMATION CONTACT: Chief of Concessions Management, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892. Phone: (907) 257–2475.

SUPPLEMENTARY INFORMATION:

Background

ANILCA (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980. Its broad purpose is to provide for the disposition and use of a variety of federally-owned lands in Alaska. Section 1307 of ANILCA (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to providing ''visitor services'' in certain lands under the administration of the Secretary of the Interior as part of the National Park System. The term ''visitor service'' is defined in section 1307 as ''any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides excepting the guiding of sport hunting and fishing.'' Subsection (a) of section 1307 states as follows:

> Notwithstanding any other provision of law, the Secretary [of the Interior], under such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service [as defined in subsection (c)] within any area established as or added to a conservation system unit to continue providing such type of service and similar types of visitor services within such area if such service or services are consistent with the purposes for which such unit is established or expanded (16 U.S.C. 3197).

Subsection (b) of section 1307 states as follows:

> Notwithstanding provisions of law other than those contained in subsection (a), in selecting persons to provide (and in the contracting of) any type of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary [of the Interior]—
>
> (1) shall give preference to the Native corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act;
>
> (2) shall give preference to persons whom he determines, by rule, are local residents * * * (16 U.S.C. 3197).

Subsection (b) also provides to Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet Region when appropriate, the right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is located within the Cook Inlet Region.

The NPS was created by Congress in 1916 to manage the growing number of park areas. The purposes of the NPS as stated in the NPS Organic Act of August 25, 1916, are ''to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations'' (16 U.S.C. 1). Additionally, Congress has declared that the National Park System should be, ''preserved and managed for the benefit and inspiration of all the people of the United States'' (16 U.S.C. 1a–1). The National Park Service seeks both to preserve and to provide for the public enjoyment of significant aspects of the Nation's natural and cultural heritage.

To provide park visitors necessary and appropriate facilities and services to enjoy park areas, Congress established a concessions program in the National Park Service through the Concessions Policy Act of 1965 (79 Stat. 969; 16 U.S.C. 20). Regulations implementing the Concessions Policy Act are found in 36 CFR part 51.

The Concessions Policy Act authorizes the Secretary of the Interior or designee to enter into concessions contracts or issue permits to qualified concessioners. The NPS may provide ''necessary and appropriate'' visitor facilities and services for the public through these contracts and permits. These services include a wide variety of commercial visitor services from backcountry guiding to hotel operations. All are provided by private corporations, partnerships, individuals, or other entities under contract with the National Park Service. All exist for the purpose of providing park visitors with the services and accommodations that are necessary and appropriate for their full enjoyment of America's national parks. The determination of what is necessary and appropriate is done through the National Park Service planning process. Needs vary with the purposes of the various park areas and their individual circumstances at the time of contracting. As applicable, the Concessions Policy Act grants a preference in renewal of concession authorizations to those concessioners who have performed contractual obligations to the satisfaction of the Secretary. These proposed regulations describe the relationship of the Concessions Policy Act's preference to the preferences to continue providing visitor services provided by section 1307 of ANILCA.

Section-by-Section Analysis

Section 13.80 Applicability and Scope

Section 13.80 explains in which park areas these regulations are applicable, and the extent to which they apply to existing and future operators.

Section 13.81 Definitions

Section 13.81 provides a number of definitions for terms used in the regulations. ''Historical operators'' and ''preferred operators'' are new terms which are explained in detail below. The term ''persons'' as used in these regulations is defined in 36 CFR § 1.4.

Section 13.82 Visitor Services Existing on or Before January 1, 1979 (Historical Operators)

These provisions implement subsection (a) of section 1307 and permits persons who were adequately providing visitor services in applicable areas in Alaska prior to January 1, 1979, to continue to do so under reasonable terms and conditions. Such persons are referred to as ''historical operators.''

Section 13.82 makes clear that the existence of a right to continue to provide visitor services under subsection 1307(a) is not an unlimited right. The right is subordinate to the

management of the park area and does not grant a monopoly to provide all visitor services in a given area to the exclusion of other individuals or entities. An historical operator, however, may provide services similar to those provided prior to January 1, 1979, if acceptable to NPS as consistent with the purposes of the park area and provided that the similar services are not in excess of those provided by the concessioner as of January 1, 1979. In addition, the rights of an historical operator are considered terminated upon a change in the controlling interest in the historical operator. This provision is intended to implement the ''grandfather clause'' intention of section 1307(a) while not permitting the effective transfer of these ''grandfather rights'' to third parties.

Persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a park area in Alaska, who have continued to provide that visitor service without a break in the service, and who have retained controlling interest in the business are considered historical operators under these regulations. A break in service is defined as not having operated the approved visitor service for more than 11 consecutive months.

Section 13.83 Visitor Services Authorized After January 1, 1979 (Preferred Operators)

This section implements subsection (b) of section 1307 (except with respect to CIRI) and grants a ''preference'' (generally defined for the purpose of these regulations as a right to meet the terms of the best offer received by NPS in a public solicitation process for visitor services) to certain individuals and corporations to provide visitor services in certain Alaska park areas.

Section 13.83 of the proposed regulations applies to the two categories of persons to be given a preference pursuant to section 1307(b) of ANILCA, collectively referred to as ''preferred operators.'' The first category of preferred operator is the Native corporation determined by the Director to be most directly affected by the park area.

The second category of preferred operator consists of persons who are determined by the Director to be local residents of any park area, whether or not it pre-existed ANILCA. A ''local resident'' as defined in these proposed regulations means a person living within 35 straight-line miles of a park area boundary. This would not apply under section 13.83 to persons living in communities with a population of more than 5,000 in order to effect the general legislative intent of assisting persons located in sparsely populated areas of Alaska.

Section 13.83 as proposed establishes a procedure for the solicitation and award of visitor service authorizations which incorporates the rights of preferred operators under section 1307(b). In order to exercise the preference, a preferred operator must submit a responsive offer under the terms of a public solicitation. If a person without a preference submits a better offer, the preferred operator is given an opportunity to meet the terms of the better offer, and if the preferred operator does so, will be awarded the contract or permit if the preferred operator is capable of carrying out the terms of the better offer, as determined by the Director.

As with historical operators, the NPS does not consider that section 1307(b) intended to provide preferred operators with an exclusive right to provide visitor services. Section 13.83 permits other persons to provide visitor services in park areas in a manner consistent with the preference of preferred operators. Accordingly, public solicitations for section 13.83 purposes will generally be the public solicitation used for general concession authorizations under 36 CFR Part 51.

Congress recognized the possibility that more than one Native corporation preferred operator and/or more than one local resident preferred operator may submit proposals, and meant for them to hold equal status. Section 13.83 also establishes procedures for resolving disputes where more than one person qualifies as a preferred operator with respect to a particular visitor service authorization.

Section 13.84 Preference to Cook Inlet Region, Incorporated

This section describes the right of first refusal granted by section 1307(b) to Cook Inlet Region, Incorporated to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet Region.

Section 13.85 Most Directly Affected Native Corporation Determination

This section establishes procedures and criteria for determining which Native corporation is most directly affected by a park area and accordingly is a preferred operator with respect to that park area. The Director's ''most directly affected'' Native corporation decision or appeal decision is final for all future applicable visitor services.

Section 13.86 Appeal Procedures

This section establishes procedures and criteria under which a person who considers that they have not been provided section 1307 rights may appeal to the Director for a final administrative determination in this regard.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule as described above. Public hearings on these proposed regulations may be held following their publication in the **Federal Register**. If such hearings are held, specific locations, dates and times will be announced later in the **Federal Register** and in local publications.

Drafting Information

The primary author of these proposed regulations is William P. Quinn, Concessions Analyst, Alaska Region, NPS.

Paperwork Reduction Act

The collections of information contained in §§ 13.82—13.84 of this proposed rule are for the purposes of preparing an offer in response to a contract solicitation pursuant to 36 CFR Part 51, and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0095.

The collections of information contained in section 13.85 of this proposed rule will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information in the final rule will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for the collection of information under section 13.85 is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20013; and the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20002.

Compliance With Other Laws

This rule was reviewed under Executive Order 12866 and the Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analysis for rules that will have a significant effect on a substantial number of small entities, that include small businesses, organizations or governmental jurisdictions. Local visitor service providers, exercising their right under Section 1307(b) of ANILCA, will benefit more than companies without the preference. This preference will have a positive impact on the local areas by increasing the economic base of these communities. This impact, while important in relation to the total economic level of the local area, is very small in actual dollar value. Therefore, this rule would have no ''significant'' economic impact on the local communities or local governmental entities.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environmental health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships of land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 13

Alaska national parks, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 36, Chapter I, Part 13 of the Code of Federal Regulations is proposed to be amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

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

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; subpart D also issued under 16 U.S.C. 20, 3197; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. In § 13.2, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 13.2 Applicability and scope.

(e) Subpart D of this Part 13 contains regulations applicable to authorized visitor service providers operating within certain park areas. The regulations in subpart D of this part amend in part the general regulations contained in this chapter.

* * * * *

3. In part 13, a new Subpart D is added to read as follows:

Subpart D—Special Concessions Regulations; Visitor Services

Sec.

13.80 Applicability and scope.
13.81 Definitions.
13.82 Visitor services existing on or before January 1, 1979 (historical operators).
13.83 Visitor services authorized after January 1, 1979 (preferred operators).
13.84 Preference granted to Cook Inlet Region, Incorporated.
13.85 Most directly affected Native corporation.
13.86 Appeal procedures.
13.87 Information collection. [Reserved]

Subpart D—Special Concessions Regulations; Visitor Services

§ 13.80 Applicability and scope.

(a) Except as otherwise provided for in this section, the regulations contained in this part apply to visitor services provided within all park areas in Alaska.

(b) The rights or preferences granted by this subpart to historical operators, preferred operators, and Cook Inlet Region, Incorporated are not exclusive. The Director may authorize other persons to provide visitor services on park lands.

§ 13.81 Definitions.

The following definitions shall apply to this subpart:

(a) *Director* means the Director of the National Park Service or an authorized representative.

(b) *Controlling interest* means, in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business, so as to permit exercise of managerial authority over the actions and operations of the corporation, or election of a majority of the Board of Directors of the corporation. ''Controlling interest'' in the case of a partnership, limited partnership, joint venture or individual entrepreneurship, means a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, ''controlling interest'' means any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

(c) *Historical operator* means any person who:

(1) On or before January 1, 1979, was lawfully engaged in adequately providing any type of visitor service in a park area within the scope of § 13.82;

(2) Has continued to provide that visitor service without a break in the service for more than eleven continuous months; and

(3) Is otherwise determined by the Director to have a right to continue to provide such services or similar services pursuant to § 13.82.

(d) *Local area* means that area in Alaska within the park boundary, as well as the area within 35 straight-line miles of a park boundary, but excluding communities with a population in excess of 5,000 persons.

(e) *Local resident* means:

(1) *For individuals that operate a business as a sole proprietorship or partnership.* Those individuals that maintain a primary, permanent residence and business within the local area and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, Department of Fish and Game, tax returns, and voter registrations.

(2) *For corporations.* A corporation that maintains its headquarters within the local area, and all of the stockholders, who own a controlling interest in the corporation, qualify as individual local residents under this section.

(f) *Native Corporation* means the same as defined in section 102(6) of ANILCA.

(g) *Preferred operator* means a local resident or Native Corporation that is entitled to a preference under this subpart in the award of visitor service authorizations as provided under section 1307(b) of ANILCA.

(h) *Similar visitor service* means that visitor service authorized by the Director to be provided in a park area and determined by the Director, on a case-by-case basis, to be similar in kind and scope to an established service being provided by a historical operator.

(i) *Visitor service* means any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a park area, including such services as providing food, accommodations, transportation, tours, and guides, excepting the guiding of sport hunting and fishing. This also includes any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization that are in excess of the bona fide expenses of the trip.

§ 13.82 Visitor services existing on or before January 1, 1979 (historical operators).

(a) A historical operator shall have a right to continue to provide visitor services or similar services in a qualified park area under appropriate terms and conditions so long as such services are determined by the Director to be consistent with the purposes for which the park area was established. A historical operator must obtain a permit from the Director to conduct the visitor services. The permit shall be for a fixed term and shall contain such terms and conditions as are in the public interest. Failure to comply with the terms and conditions of the permit may result in cancellation of the authorization and consequent loss of historical operator rights under this subpart. Nothing in this subpart shall prohibit the Director from permitting persons in addition to historical operators to provide visitor services in park areas at the Director's discretion so long as historical operators are permitted to conduct a scope or level of visitor services equal to those provided prior to January 1, 1979, under terms and conditions consistent with this subpart. A historical operator may be permitted by the Director under separate authority to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights shall be obtained in such increase.

(b) When a historical operator permit has expired, and if the visitor services permitted thereunder continue to be adequately provided and consistent with the purposes for which the park area was established as determined by the Director, the Director shall renew the permit for a fixed term consistent with such new terms and conditions as are in the public interest. Should a historical operator decline to accept an offer of renewal, its rights as a historical operator shall be considered as terminated.

(c) If the Director determines that permitted visitor services must be curtailed or reduced in scope, level or season to protect park resources, or for other purposes, the Director shall require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Director shall establish a proportionate reduction of visitor services among all such historical operators taking into account historical operating levels and other appropriate factors so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Director shall select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(d) The rights of a historical operator shall terminate if the historical operator fails to provide the visitor services under the terms and conditions of a permit issued by the Director or fails to provided the visitor services for a period of more than eleven consecutive months.

(e) The rights of a historical operator under this subpart shall terminate upon a change, after January 1, 1979, in the controlling interest of the historical operator through sale, assignment, devise, transfer or otherwise.

(f) A historical operator may apply to the Director for a permit or amended permit to provide similar visitor services. The Director shall grant the request if such visitor services are determined by the Director:

(1) To be consistent with the protection of park resources and the purposes for which the park area was established;

(2) Similar to the visitor services provided by the historical operator prior to January 1, 1979;

(3) Not to be in violation of the legal rights of any other person; and

(4) Granting the request will not result in an increase in the scope and level of service in excess of those provided by the requesting historical operator as of January 1, 1979.

(g) The Director may authorize other persons to provide visitor services in a park area in addition to historical operators.

§ 13.83 Visitor services authorized after January 1, 1979 (preferred operators).

(a) In selecting persons to provide, and in contracting for the provision of, any type of visitor services for a qualified park area, the Director will give a preference to preferred operators determined qualified to provide such a visitor service.

(b) In selecting persons to provide any type of visitor services for park areas subject to a preferred operator preference under this section, the Director will publicly solicit offers for persons to apply for an authorization, or the renewal of an authorization, to provide such visitor services pursuant to 36 CFR part 51 and other National Park Service procedures. A preferred operator must submit a responsive offer in response to such solicitation in order to effect its preference. If, as a result of the solicitation, an offer from a person other than a preferred operator is determined to be the best offer received and that offeror is determined to be capable of carrying out the terms of the authorization, a preferred operator that submitted a responsive offer shall be given an opportunity to meet the terms of the best offer received by amending its offer. If the amended offer of a preferred operator is considered by the Director as meeting the terms of the best offer, the preferred operator, if it is determined to be capable as carrying out the terms of the authorization, shall be awarded the visitor service authorization. If a preferred operator fails to meet these requirements, the Director shall award the authorization to the person who submitted the best offer in response to the solicitation. In the event this process results in more than one preferred operator having submitted an offer meeting the terms of the best offer received, the Director will select for award of the authorization that preferred operator that submitted the best offer as determined by the Director.

(c) The rights of preferred operators under this section take precedence over the right of preference granted to existing satisfactory NPS concessioners pursuant to the Concessions Policy Act (16 U.S.C. 20) and implementing regulations and procedures, but do not take precedence over the rights of historical operators as described in this subpart. Nothing in this subpart shall prohibit the Director from authorizing persons other than preferred operators to provide visitor services in park areas so long as the procedures described in this section have been followed. Preferred operators are not entitled by this section to provide all visitor services in a qualified park area.

(d) An offer from a Native corporation under this section must document its total ownership of the business entity making the offer.

(e) The preferences described in this section may not be sold, assigned, transferred or devised, directly or indirectly.

§ 13.84 Preference to Cook Inlet Region, Incorporated.

(a) The Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet Region, when appropriate, shall have a right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet Region. In order to exercise this right of first refusal, CIRI must submit a responsive offer under the terms of an NPS public solicitation for offers to conduct such visitor services. A responsive offer is one that is timely made and meets the terms and conditions of the solicitation document. If CIRI makes such an offer and is determined by the Director to be capable of carrying out the terms of the visitor services authorization, it shall be awarded the authorization. If it does not, the authorization may be awarded to another person pursuant to usual National Park Service policies and procedures. An offer from CIRI under this section must document total ownership in the entity making the offer by CIRI and/or a village corporation. The CIRI right of first refusal shall have precedence over the rights of preferred operators.

(b) The right of first refusal described in this section may not be sold, transferred, devised or assigned, directly or indirectly.

§ 13.85 Most directly affected Native corporation.

(a) Prior to the award of a concession authorization for a visitor service in a park area, the Director shall provide an opportunity for any Native corporation interested in providing such new visitor services within an applicable park area to submit an application to the Superintendent including, but not limited to, the following information:

(1) The name, address, and phone number of the Native corporation; the date of incorporation; its articles of incorporation and structure; and the name of the applicable park area;

(2) The location of the corporation's population center or centers; and

(3) The socio-economic impacts and their effects as a result of the expansion or establishment of the park area.

(b) Upon receipt of all applications from interested Native corporations, the Director will determine the ''most directly affected'' Native corporation based on the following criteria:

(1) The number of acres of surface land within and adjoining the park area that the Native corporation owns, or that has been selected under the Alaska Native Claims Settlement Act, unless such selection is determined to be invalid or is relinquished;

(2) The distance and accessibility from the corporation's population center and/or business address to the applicable park area; and

(3) The socio-economic impacts and their effects as a result of the expansion or establishment of the park area.

(c) In the event that more than one Native corporation is determined to be equally affected, each such Native corporation shall be considered as a preferred operator under this subpart. Preferred operators may form joint ventures with other preferred operators in applying for a visitor service authorization under this subpart.

(d) The Director's ''most directly affected'' Native corporation determination or, when requested, appeal decision for a park area is final for all applicable solicitations for all future visitor services which are issued after the Director's determination or appeal decision.

§ 13.86 Appeal procedures.

Any person who considers that they have been improperly denied rights with respect to providing visitor services under this subpart may appeal the denial to the Director. Such an appeal must be submitted in writing within 30 days of receipt of the denial from which an appeal is sought. Appeals must set forth the facts and circumstances which the appellant considers supports the appeal. The appellant may request an informal meeting to discuss the appeal with the Director. After consideration of the materials submitted by the appellant and the National Park Service record of the matter, and meeting with the appellant if so requested, the Director shall affirm, reverse, or modify the denial appealed from and shall set forth in writing the basis of the decision. A copy of the decision shall be forwarded to the appellant and shall constitute the final administrative decision in the matter. No person shall be considered to have exhausted administrative remedies with respect to a denial of rights to provide visitor services under this subpart until a final administrative decision has been made pursuant to this section.

§ 13.87 Information collection.

[Reserved]

Dated: March 18, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–10129 Filed 4–24–95; 8:45 am]

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federal register

Tuesday
April 25, 1995

Part X

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Visitor Service Authorizations on Alaska National Wildlife Refuges; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC02

Visitor Service Authorizations on Alaska National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (FWS) proposes regulations to implement Section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA). This action is necessary to establish the procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide visitor services other than hunting and fishing guiding on National Wildlife Refuge System lands in Alaska. This rulemaking will provide guidance in the solicitation, award, and renewal of Alaska visitor service authorizations.

DATES: Written comments will be accepted until June 26, 1995.

ADDRESSES: Comments should be addressed to: Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: David G. Patterson, Regional Public Use Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3389.

SUPPLEMENTARY INFORMATION:

Background

ANILCA (16 U.S.C. 3101 et. seq.) was signed into law on December 2, 1980. Its broad purpose is to provide for the disposition and use of a variety of federally owned lands in Alaska. Section 1307 of ANILCA (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to providing ''visitor services'' in certain lands under the administration of the Secretary of the Interior, in this context, units of the National Wildlife Refuge System. The term ''visitor service'' is defined in section 1307 as ''any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides excepting the guiding of sport hunting and fishing.''

Section (a) of Section 1307 states as follows:

> Notwithstanding any other provision of law, the Secretary [of the Interior], under such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service [as defined in subsection (c)] within any area established as or added to a conservation system unit to continue providing such type of service and similar types of visitor services within such area if such service or services are consistent with the purposes for which such unit is established or expanded. (16 U.S.C. 3197)

Subsection (b) of Section 1307 states as follows:

> Notwithstanding provisions of law other than those contained in subsection (a), in selecting persons to provide (and in the contracting of) any type of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary [of the Interior]—
>
> (1) shall give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act;
>
> (2) shall give preference to persons whom he determines, by rule, are local residents * * * (16 U.S.C. 3197).

Subsection (b) also provides to Cook Inlet Region, Incorporated (CIRI), in cooperation with Village Corporations within the Cook Inlet Region when appropriate, the right of first refusal to provide new visitor services within the Kenai National Moose Range, (Kenai National Wildlife Refuge), within the Cook Inlet Region.

The Alaska National Wildlife Refuge System is managed by the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), Refuge Recreation Act (16 U.S.C. 460k–460k–4), and the Alaska National Interest Lands Conservation Act (ANILCA) (84 Stat. 2371 *et seq.*; codified as amended in scattered sections of 16 U.S.C., 43 U.S.C., 48 U.S.C.).

The Secretary of the Interior is authorized under the National Wildlife Refuge System Administration Act to provide for visitor services within the refuge system which he determines are compatible with the purposes for which the area was established as a refuge (16 U.S.C. 668dd(b)(1)). In accordance with that authority, provision is made in the Fish and Wildlife Service refuge regulations for operation of public use facilities and services on national wildlife refuges by concessionaires or cooperators under appropriate contracts or legal agreements (50 C.F.R. 25.61). These proposed regulations provide the means for selecting the providers of services and facilities (except sport fishing and hunting guiding activities) to the public on national wildlife refuges in Alaska under section 1307 of ANILCA.

Paperwork Reduction Act

The information collection requirements contained in part 36 have been approved by the Office of Management and Budget under 44 U.S.C. et seq. and assigned clearance number 1018–0077. The information is being collected to assist the Service in administering these programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits. The information requested in the application form is required to obtain a benefit. The public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, MS 224 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0077), Washington, DC 20530.

Environmental Considerations

In accordance with 516 DM 2, Appendix 2, the Service claims a categorical exclusion to this rulemaking as this is pursuant to ''policies, directives, regulations and guidelines of an administrative, financial, legal technical or procedural nature'', and as this rulemaking establishes procedures to allow continuing services on certain Alaska refuge units.

Economic Effects/Regulatory Flexibility Act Compliance

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. It is estimated that the need for new visitor services will result in less than five (5) special use permits per year statewide. There is a high probability that local visitor service providers, exercising their right under Section 1307(b) of

ANILCA, would be awarded more permits than companies without the preference. This preference will have a positive impact on the local areas by increasing the economic base of these communities. This impact, while important in relation to the total economic level of the local area, is very small in actual dollar value. It is anticipated that each of the projected new permits issued annually will generate between $50,000 and $200,000 in revenue, depending on the service provided. Therefore, this rule would have no ''significant'' economic impact on the local communities or local governmental entities.

Drafting Information

The primary author of this proposed regulation is David G. Patterson, Regional Public Use Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, and Wildlife refuges.

Accordingly, part 36 of chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460k *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, 44 U.S.C. 3501 *et seq.*

2. A new § 36.37 is added to subpart D of part 36 to read as follows:

§ 36.37 Revenue producing visitor services.

(a) *Applicability.*

The regulations contained in this section apply to visitor services, except guided sport fishing and hunting, provided within all Alaska National Wildlife Refuge areas.

(b) *Definitions.* The following definitions shall apply to this section:

(1) *Adequate services* means, services which are safe, sanitary, and attractive, at levels visitors would expect from the private sector operating outside U.S. Fish and Wildlife Service (Service) areas, have been evaluated as satisfactory, and meet the needs and requirements of the Service and the refuge in which the service is authorized.

(2) *Controlling interest* means, in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business, so as to permit exercise of final managerial authority over the actions and operations of the corporation, or election of a majority of the Board of Directors of the corporation. ''Controlling interest'' in the case of a partnership, limited partnership, joint venture or individual entrepreneurship, means a beneficial ownership of or interest in the entity so as to permit the exercise of final managerial authority over the actions and operations of the entity. In other circumstances, ''controlling interest'' means any arrangement under which a third party has the ability to exercise general management authority over the actions or operations of the business.

(3) *Historical operator* means any person who:

(i) On or before January 1, 1979, was lawfully engaged in adequately providing any type of visitor service in a refuge within the scope of paragraph (c) of this section;

(ii) Has continued to provide that visitor service without a break in the service for more than eleven continuous months; and

(iii) Is otherwise determined by the Refuge Manager to have a right to continue to provide such services or similar services pursuant to paragraph (c) of this section.

(4) *Local area* means that area in Alaska within the refuge boundary as well as the area within 35 straight-line miles of the refuge boundary, but excluding communities with a population in excess of five thousand persons.

(5) *Local resident* means:

(i) *For individuals that operate a business as a sole proprietorship or partnership.* Those individuals that maintain a primary, permanent residence and business within the local area and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, Department of Fish and Game, tax returns, and voter registrations.

(ii) *For corporations.* A corporation which maintains its headquarters within the local area, and all of the stockholders, who own a controlling interest in the corporation, qualify as individual local residents under this section.

(6) *Native Corporation* means the same as defined in section 102(6) of ANILCA.

(7) *Preferred operator* means a local resident or Native Corporation which is entitled to a preference under this section in the award of visitor service authorizations, and as otherwise provided under section 1307(b) of ANILCA.

(8) *Similar visitor service* means that visitor service authorized by the Refuge Manager to be provided on a refuge and determined by the Refuge Manager, on a case by case basis, to be similar to an established service being provided by an historical operator.

(9) *Visitor service* means any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a refuge, including such services as providing food, accommodations, transportation, tours, and guides, excepting the guiding of sport hunting and fishing. This also includes any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip.

(10) *Right of first refusal* means, as it relates to section 1307(a) of ANILCA, a reasonable opportunity for a historical operator to review a description of the new similar service and the terms and conditions upon which it is to be provided to determine if the historical visitor service operator wishes to provide the service. As it relates to section 1307(c) of ANILCA, it refers to the opportunity for Cook Inlet Region, Incorporated, to have the first opportunity to provide new visitor services on the Kenai National Wildlife Refuge in the Cook Inlet Region.

(11) *Right of preference* means that persons with a preference conveyed by section 1307(b) of ANILCA will be given an opportunity to meet the terms and conditions of the best proposal submitted in response to a visitor service prospectus.

(c) *Visitor services existing on or before January 1, 1979, ''historical operators''.* (1) An historical operator shall have a right to continue to provide visitor services or similar services in a refuge under appropriate terms and conditions so long as such services are determined by the Refuge Manager to be consistent with the purposes for which the refuge was established. An historical operator must obtain a permit from the refuge manager to conduct the visitor services. The permit shall be for a fixed term and shall contain such terms and conditions as are in the public interest. Failure to comply with the terms and conditions of the permit may result in cancellation of the authorization and consequent loss of historical operator rights under this section. Nothing in this section shall prohibit the Refuge

Manager from permitting persons in addition to historical operators to provide visitor services in the refuge at the Refuge Manager's discretion so long as historical operators are permitted to conduct a scope or level of visitor services equal to or greater than those provided prior to January 1, 1979, under terms and conditions consistent with this section. An historical operator may be permitted by the Refuge Manager under seperate authority to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights shall be obtained in such increase.

(2) When an historical operator permit has expired, and if the visitor services permitted thereunder continue to be adequately provided and consistent with the purposes of the refuge as determined by the Refuge Manager, the Refuge Manager shall renew the permit for a fixed term consistent with such new terms and conditions as are in the public interest. Should an historical operator decline to accept an offer of renewal, its rights as an historical operator shall be considered as terminated.

(3) If the Refuge Manager determines that permitted visitor services must be curtailed or reduced in scope or season to protect refuge resources, or for other purposes, the Refuge Manager shall require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Refuge Manager shall establish a proportionate reduction of visitor services among all such historical operators taking into account historical operating levels and other appropriate factors so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Refuge Manager shall select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(4) The rights of an historical operator shall terminate if the historical operator fails to provide the visitor services under the terms and conditions of a permit issued by the Refuge Manager or fails to provide the visitor services for a period of more than eleven consecutive months.

(5) The rights of an historical operator under this section shall terminate upon a change, after January 1, 1979, in the controlling interest in the historical operator through sale, assignment, devise, transfer or otherwise.

(6) An historical operator may apply to the Refuge Manager for a permit or amended permit to provide similar visitor services. The Refuge Manager shall grant the request if such visitor services are determined by the Refuge Manager:

(i) To be consistent with the management of refuge resources and the purposes for which the refuge area was established;

(ii) Similar to the visitor services provided by the historical operator prior to January 1, 1979;

(iii) To not be in violation of the legal rights of any other person; and

(iv) Granting the request will not result in an increase in the scope and level of service in excess of those provided by the requesting historical operator as of January 1, 1979.

(7) The Refuge Manager may authorize other persons to provide visitor services in a refuge in addition to historical operators, as long as such other persons conducted the services in a manner compatible with the purposes of the refuge.

(d) *Visitor services initially authorized after January 1, 1979, ''preferred operators''.* (1) In selecting persons to provide, and in permitting any type of visitor services, excepting guided hunting or fishing, the Refuge Manager will give a preference to preferred operators determined qualified to provide such visitor services.

(2) In selecting persons to provide any type of visitor services for refuges subject to a preferred operator preference under this section, the Refuge Manager will publicly solicit offers for persons to apply for a permit, or the renewal of a permit, to provide such visitor services pursuant to Service procedures. A preferred operator must submit a responsive offer to such solicitation in order to effect their preference. If, as a result of the solicitation, an offer from a person other than a preferred operator is determined to be the best offer received and that offeror is determined to be capable of carrying out the terms of the authorization, a preferred operator which submitted a responsive offer shall be given an opportunity to meet the terms of the best offer received by amending its offer. If the amended offer of a preferred operator is considered by the Refuge Manager as meeting the terms of the best offer, the preferred operator, if it is determined to be capable of carrying out the terms of the permit, shall be awarded the visitor service permit. If a preferred operator fails to meet these requirements, the Refuge Manager shall award the permit to the person who submitted the best offer in response to the solicitation. In the event this process results in more than one preferred operator having submitted an offer meeting the terms of the best offer received, the Refuge Manager will select for award of the permit that preferred operator who submitted the best offer as determined by the Refuge Manager.

(3) The rights of preferred operators under this section take precedence over the permit privileges granted to satisfactorily performing current special use permit holders, but do not take precedence over the rights of historical operators as described in this section. Nothing in this section shall prohibit the Refuge Manager from authorizing persons other than preferred operators to provide visitor services in refuge areas so long as the procedures described in this section have been followed with respect to preferred operators. Preferred operators are not entitled by this section to provide all visitor services in a qualified refuge.

(4) An offer from a Native Corporation under this section must document its total ownership of the business entity making the offer.

(5) The preferences described in this section may not be sold, assigned, transferred or devised, directly or indirectly.

(e) *Preference to Cook Inlet Region, Incorporated (CIRI).* (1) Cook Inlet Region, Incorporated, (CIRI) in cooperation with village corporations within Cook Inlet Region, when appropriate, shall have a right of first refusal to provide new visitor services within that portion of the Kenai National Moose Range, (Kenai National Wildlife Refuge), within the boundaries of Cook Inlet Region. CIRI shall have ninety (90) days from receipt of a prospectus in which to exercise its right.

(2) In order to exercise this right of first refusal, CIRI must submit a responsive offer under the terms of a Service public solicitation for offers to conduct such visitor services. A responsive offer is one which is timely made and meets the terms and conditions of the solicitation document. If CIRI makes such an offer and is determined by the Refuge Manager to be capable of carrying out the terms of the special use permit, it shall be awarded the permit. If it does not, the permit may be awarded to another person pursuant to a showing that such other person can carry out the conditions of the special use permit in a manner compatible with the purposes of the refuge. An offer from CIRI under this section must document total ownership in the entity making the

offer by CIRI and/or a Village Corporation. The CIRI right of first refusal shall have precedence over the rights of preferred operators.

(3) The right of first refusal described in this section may not be sold, transferred, devised or assigned, directly or indirectly.

(f) *Most directly affected Native Corporation determination.* (1) Prior to the issuance of a solicitation document for any future visitor service in a refuge, the Refuge Manager shall provide an opportunity for any Native Corporation interested in providing such new visitor services within a refuge to submit an application to the Refuge Manager including, but not limited to, the following information:

(i) The name, address, and phone number of the Native Corporation; the date of incorporation; its articles of incorporation and structure; and the name of the applicable refuge area;

(ii) The location of the Native Corporation's population center or centers; and

(iii) The socio-economic impacts and their effects as a result of the expansion or establishment of the refuge area.

(2) Upon receipt of all applications from interested Native Corporations, the Refuge Manager will determine the ''most directly affected'' Native Corporation based on the following criteria:

(i) The number of acres of surface land within and adjoining the refuge that the Native Corporation owns, or which has been selected under the Alaska Native Claims Settlement Act, unless such selection is determined to be invalid or is relinquished;

(ii) The distance and accessibility from the Native Corporation's population center and/or business address to the applicable refuge; and

(iii) The socio-economic impacts and their effects as a result of the expansion or establishment of the refuge.

(3) In the event that more than one Native Corporation is determined to be equally affected, each such Native Corporation shall be considered as a preferred operator under this section. Preferred operators may form joint ventures with other preferred operators in applying for a visitor service authorization under this section.

(4) The Refuge Manager's ''most directly affected'' Native Corporation determination or, when requested, the Regional Director's appeal decision, for a refuge is final for all applicable solicitations for new visitor services.

(g) *Appeal procedures.* Any person who considers that they have been improperly denied rights with respect to providing visitor services under this section may appeal the denial to the Regional Director. Such an appeal must be submitted in writing within thirty (30) days of receipt of the denial from which an appeal is sought. Appeals must set forth the facts and circumstances which the appellant considers as supporting the appeal. The appellant may request an informal meeting to discuss the appeal with the Regional Director. After consideration of the materials submitted by the appellant, the Service record of the matter, and any meeting as requested by the appellant, the Regional Director shall affirm, reverse, or modify the denial appealed from and shall set forth in writing the basis of the decision. A copy of the decision shall be forwarded to the appellant and shall constitute the final administrative decision in the matter. No person shall be considered to have exhausted administrative remedies with respect to a denial of rights to provide visitor services under this section until a final administrative decision has been made pursuant to this section.

Dated: March 18, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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federal register

Tuesday
April 25, 1995

Part XI

The President

Proclamation 6789—National Day of Mourning in Memory of Those Who Died in Oklahoma City

Proclamation 6790—National Volunteer Week

Federal Register
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Tuesday, April 25, 1995

Presidential Documents

Title 3—

The President

Proclamation 6789 of April 21, 1995

National Day of Mourning in Memory of Those Who Died in Oklahoma City

By the President of the United States of America

A Proclamation

As we seek justice for the evil done in Oklahoma City on April 19, 1995, good and decent people everywhere mourn the loss of innocents. Our sons and daughters, parents and friends were stolen from us. Their families can never replace the gift of their laughter. Our Nation can never replace the spirit of their character. But even as we grieve, we resolve today in solemn promise that those on earth shall never be bowed by murderous cowards. This sin against humanity shall not go unpunished.

It has been said that, ''In every child who is born, the potentiality of the whole human race is born again.'' We lost unimaginable potential this past week. And we will miss our loved ones dearly. But the children who died in this violence may yet lift up humanity. We do them no greater honor than by taking from their deaths the memory of their hopes, by carrying with us always their dreams, their kind and trusting ways. We redeem the value of their lives no further than by heeding the voices of children everywhere, who ask simply and invariably for peace and love.

We take comfort in knowing that all who perished are in God's hands.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby appoint Sunday, April 23, 1995, as a National Day of Mourning throughout the United States. I ask the American people assembled on that day in their homes and places of worship to pay homage to the memory of those lost in the Oklahoma City tragedy and to pray for them and their community. I invite all those around the world who share our grief to join us in this solemn observance.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, 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.

William J. Clinton

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Presidential Documents

Proclamation 6790 of April 21, 1995

National Volunteer Week, 1995

By the President of the United States of America

A Proclamation

Our ancestors built this Nation on the spirit of independence and the strength of community. Yesterday's Americans came together to raise a barn, till a farm, or teach a child to write. They came together to care for one another and to lift up their neighbors in need. For rich and poor, old and young, giving their talents to benefit the community was the most fundamental responsibility of American citizenship.

Through the years, this basic ideal has endured. Service remains the noblest quality of the American character. Our people still come together to build a house, plant a garden, or tutor a child. Elementary school students help older Americans in their daily lives. Seniors help struggling teenagers stay out of trouble. Countless dedicated citizens claim our country's challenges as their own. Their service sets a powerful example of leadership and compassion for each of us to follow.

As a partner in progress, government can expand and strengthen this great American legacy. AmeriCorps, the Senior Corps, and Learn and Serve America now provide service opportunities for more than a million of our citizens. These initiatives enable us to keep faith with the covenant of citizenship. This week, we celebrate the tens of millions of volunteers who give their time, their energy, and their hearts to making our world a better place.

We are indeed fortunate that, even as we face difficult problems in our streets, schools, homes, and communities, citizens are volunteering to help one another in numerous ways. Some spend a few hours every week. Others give entire days—even years—of their lives to service. Each makes a lasting contribution to the substance and the spirit of community in America. And each helps lead us into an ever brighter future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 23 through April 29, 1995, as ''National Volunteer Week.'' I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities in expression of their commitment.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, 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.

William J. Clinton

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