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Thursday
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–4]

Amendment to Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Smithfield, NC. A LOC/DME RWY 3 Standard Instrument Approach Procedure (SIAP) has been developed for Johnston County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Steve McDuffee, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On February 3, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E airspace at Smithfield, NC (60 FR 6686). This action would provide adequate Class E airspace for IFR operations at Johnston County Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Smithfield, NC, to accommodate a LOC/DME RWY 3 SIAP and for IFR operations at Johnston County Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Smithfield, NC [Amended]

Johnston County Airport, NC
(Lat. 35°32′27″ N, long. 78°23′25″ W)
Jnall NDB
(Lat. 35°26′25″ N, long. 78°21′16″ W)

That airspace extending upward from the surface within a 7.5-mile radius of Johnston County Airport and within 2.4 miles each side of the 024° bearing from the Jnall NDB, extending from the 7.5-mile radius to 7 miles northeast of the NDB.

* * * * *

Issued in College Park, Georgia, on April 14, 1995.

Stephen W. McDuffee,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–10390 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28199; Amdt. No. 1660]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

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

By Subscription

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

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

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 21, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective May 25, 1995*

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Venice, LA, Tiger Pass, NDB–A, Amdt 1, Canceled
North Platte, NE, North Platte Regional, NDB OR GPS RWY 30L, Amdt 9A, Canceled
New York, NY, La Guardia, LDA–A, Amdt 2
Mt. Airy, NC, Mt. Airy—Surry County, NDB RWY 36, Orig
Gallipolis, OH, Gallia—Meigs Regional, VOR–B, Amdt 1
Youngstown, OH, Lansdowne, NDB or GPS–B, Amdt 8
Phillips, WI, Price County, NDB or GPS RWY 6, Amdt 1
Phillips, WI, Price County, NDB or GPS RWY 24, Amdt 3
Pulaski, WI, Carter, VOR or GPS–A, Amdt 4
Sheridan, WY, Sheridan County, ILS/DME RWY 31, Amdt 5, Canceled

* * * *Effective June 22, 1995*

Birmingham, AL, Birmingham Intl, ILS RWY 5, Amdt 41
Pensacola, FL, Pensacola Regional, VOR OR GPS RWY 8, Amdt 3
Atlanta, GA, Dekalb-Peachtree, RADAR–1, Amdt 2, Canceled
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Portland, TN, Portland Muni, VOR/DME OR GPS RWY 19, Amdt 3

Winchester, TN, Winchester Muni, NDB OR GPS RWY 18, Amdt 5
Amarillo, TX, Amarillo Intl, VOR RWY 22, Orig.
Amarillo, TX, Amarillo Intl, VOR OR GPS RWY 22, Amdt 26, Canceled
Dalhart, TX, Dalhart Muni, VOR OR GPS RWY 17, Amdt 12
Dalhart, TX, Dalhart Muni, VOR/DME OR GPS RWY 35, Amdt 2

* * * *Effective July 20, 1995*

Arcata/Eureka, CA, Arcata, ILS/DME RWY 32, Amdt 1
Arcata/Eureka, CA, Arcata, ILS RWY 32, Amdt 29
Bishop, CA, Bishop, VOR/DME or GPS–B, Amdt 4
Jackson, CA, Westover Field Amador County, VOR/DME RWY 1, Amdt 1
Modesto, CA, Modesto City—County Airport-Harry Sham Field, ILS RWY 28R, Amdt 12
Santa Ana, CA, John Wayne Airport—Orange County, NDB RWY 19R, Amdt 1
Groton/New London, CT, Grotton—New London, VOR OR GPS RWY 5, Amdt 6
Groton/New London, CT, Grotton—New London, VOR OR GPS RWY 23, Amdt 8
Groton/New London, CT, Grotton—New London, ILS RWY 5, Amdt 10
Windsor Locks, CT, Bradley Intl, ILS RWY 6, Amdt 32
Windsor Locks, CT, Bradley Intl, COPTER ILS 058, Orig.
Owensboro, KY, Owensboro—Daviess County, VOR or GPS RWY 18, Amdt 8
Owensboro, KY, Owensboro—Daviess County, VOR RWY 36, Amdt 16
Owensboro, KY, Owensboro—Daviess County, LOC BC RWY 18 Orig
Owensboro, KY, Owensboro—Daviess County, NDB or GPS RWY 36, Amdt 8
Owensboro, KY, Owensboro—Daviess County, ILS RWY 36, Amdt 10
Marthas Vineyard, MA, Marthas Vineyard, VOR OR GPS RWY 6, Amdt 5, Canceled
Marthas Vineyard, MA, Marthas Vineyard, VOR OR GPS RWY 24, Amdt 12, Canceled
Marthas Vineyard, MA, Marthas Vineyard, ILS RWY 24, Amdt 8, Canceled
Vineyard Haven, MA, Marthas Vineyard, VOR OR GPS RWY 6, Orig.
Vineyard Haven, MA, Marthas Vineyard, VOR OR GPS RWY 24, Orig.
Vineyard Haven, MA, Marthas Vineyard, ILS RWY 24, Orig.
Loris, SC, Twin City, VOR/DME–A, Amdt 2
North Myrtle Beach, SC, Grand Strand, VOR or GPS RWY 5, Amdt 20
North Myrtle Beach, SC, Grand Strand, VOR or GPS RWY 23, Amdt 19
Houston, TX, West Houston, VOR OR GPS–B, Amdt 2
Houston, TX, West Houston, NDB RWY 15, Amdt 1
Houston, TX, West Houston, NDB RWY 33, Amdt 2

* * * *Effective upon Publication*

Kansas City, MO, Kansas City Intl, ILS RWY 1R, Amdt 1

[FR Doc. 95–10386 Filed 4–26–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 94–AWP–17]

Realignment of Restricted Areas R–4807A, Tonopah and R–4808N, Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns the common boundary between Restricted Areas R–4807A, Tonopah, NV, and R–48408, Las Vegas, NV, located within the Nellis Air Force Base (AFB) Range Complex. R–4807A is increased by 128 square miles on its eastern boundary and R–4808N is correspondingly reduced by the same amount. There are no changes to the designated altitudes for either R–4807A or R–4808N. Because R–4807A is a joint-use restricted area, this action will increase the airspace available for civil use when the area is released to the controlling agency. Additionally, the time of designation for R–4807A is being reduced from ''Continuous'' to ''Continuous from 0600 Monday to 1900 Friday; other times by NOTAM.'' R–4808N is a non-joint-use restricted area and is active on a continuous basis.

EFFECTIVE DATE: 0901 UTC, July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations realigns the common boundary between Restricted Areas R–4807A and R–4808N within the Nellis AFB. This amendment increases the area of R–4807A by 128 square miles on the eastern side and reduces R–4808N by the same amount. The purpose of this action is to enhance airspace utilization and allow better use of existing electronic warfare threat simulators in the area of R–4807A known as EC South (ECS). The expansion of R–4807A will support the same type of missions currently flown in the existing ECS airpace. Additionally, the time of designation for R–4807A is being reduced from ''Countinous'' to ''Continuous from 0600 Monday to 1900 Friday; other times by NOTAM.'' These actions will increase the airspace available for civil aviation use when R–4807A is released to the controlling agency. R–4808N is a non-joint-use restricted area and is active on a continuous basis. This amendment realigns the common boundary between two existing restricted areas, reduces the time of designation for R–4807A, and does not establish any new restricted airspace. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

An environmental assessment was conducted in accordance with United States Air Force (USAF) regulations and resulted in a categorical exclusion (CATEX) determination by the USAF. This action is a minor adjustment to the internal boundaries of adjacent restricted areas, without changing the outer limits of the restricted airspace complex as a whole, and a reduction in the time of use for R–4807A. This action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R–4807A Tonopah, NV [Amended]

By removing the existing boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 36°51′00″N., long. 116°33′33″W.; to lat. 37°26′30″N., long. 117°04′33″W.; to lat. 37°33′00″N., long. 117°05′41″W.; to lat. 37°53′00″N., long. 117°05′41″W.; to lat. 37°53′00″N., long. 116°55′03″W.; to lat. 37°47′00″N., long. 116°55′03″W.; to lat. 37°33′00″N., long. 116°43′03″W.; to lat. 37°33′00″N., long. 116°26′03″W.; to lat. 37°53′00″N., long. 116°26′03″W.; to lat. 37°53′00″N., long. 116°11′03″W.; to lat. 37°42′00″N., long. 116°11′03″W.; to lat. 37°42′00″N., long. 115°53′03″W.; to lat. 37°33′00″N., long. 115°53′03″W.; to lat. 37°33′00″N., long. 115°48′03″W.; to lat. 37°28′00″N., long. 115°48′03″W.; to lat. 37°28′00″N., long. 116°00′03″W.; to lat. 37°16′00″N., long. 116°00′03″W.; to lat. 37°16′00″N., long. 116°11′03″W.; to lat. 37°20′00″N., long. 116°11′03″W.; to lat. 37°23′00″N., long. 116°17′03″W.; to lat. 37°23′00″N., long. 116°22′03″W.; to lat. 37°21′00″N., long. 116°27′03″W.; to lat. 37°21′00″N., long. 116°34′03″W.; to lat. 37°16′00″N., long. 116°31′03″W.; to lat. 37°08′00″N., long. 116°27′03″W.; to lat. 36°55′00″N., long. 116°27′03″W.; to lat. 36°55′00″N., long. 116°33′33″W.; to the point of beginning.

Time of designation: Continuous from 0600 Monday to 1900 Friday; other times by NOTAM.

R–4808N Vas Vegas, NV [Amended]

By removing the existing boundaries and substituting the following:

Boundaries. Beginning at lat. 36°41′00″N., long. 115°56′03″W.; to lat. 36°41′00″N., long. 116°14′48″W.; to lat. 36°46′00″N., long. 116°26′33″W.; to lat. 36°51′00″N., long. 116°26′33″W.; to lat. 36°51′00″N., long. 116°33′33″W.; to lat. 36°55′00″N., long. 116°33′33″W.; to lat. 36°55′00″N., long. 116°27′03″W.; to lat. 37°08′00″N., long. 116°27′03″W.; to lat. 37°16′00″N., long. 116°31′03″W.; to lat. 37°16′00″N., long. 116°00′03″W.; to lat. 37°28′00″N., long. 116°00′03″W.; to lat. 37°28′00″N., long. 115°35′03″W.; to lat. 37°06′00″N., long. 115°35′03″W.; to lat. 37°06′00″N., long. 115°56′03″W.; to the point of beginning.

Issued in Washington, DC, on April 14, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–10388 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28200; Amdt. No. 1661]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected

airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 21, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 9735 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
04/05/95	GA	Cartersville	Cartersville	FDC 5/1453	LOC RWY 19 AMDT 1A...
04/05/95	GA	Cartersville	Cartersville	FDC 5/1454	NDB or GPS RWY 19 AMDT 3A...
04/07/95	AL	Troy	Troy Muni	FDC 5/1487	RADAR–1 RWY 7 AMDT 6A...
04/09/95	FM	Weno Island	Chuuk Intl	FDC 5/1525	NDB/DME RWY 4 ORIG...
04/09/95	FM	Weno Island	Chuuk Intl	FDC 5/1526	NDB–A ORIG...
04/09/95	FM	Weno Island	Chuuk Intl	FDC 5/1527	NDB–B AMDT 4...
04/11/95	GA	Brunswick	Malcom McKinnon	FDC 5/1547	VOR or GPS RWY 4, AMDT 14A...
04/12/95	MI	Hancock	Houghton County Memorial	FDC 5/1578	NDB or GPS RWY 31 AMDT 11...

Troy

Troy Muni
Alabama
RADAR–1 RWY 7 AMDT 6A...
FDC Date: 04/07/95

FDC 5/1487/TOI/ FI/P Troy Muni, Troy, AL. RADAR–1 RWY 7 AMDT 6A...Missed approach... Climb to 1200, then climbing right turn to 2100 direct blood LOM and hold West, LT, 070 inbound, or when directed by ATC, climb to 3000 ft via heading 070 and MGM R–126 to Banbi Int. This becomes RADAR–1 RWY 7 AMDT 6B.

Weno Island

Chuuk Intl
FM.
NDB/DME RWY 4 ORIG...
FDC Date: 04/09/95

FDC 5/1525/TKK/ FI/P Chuuk Intl, Weno Island, FM. NDB/DME RWY 4 ORIG...Alternate MNMS... 800–3. This becomes NDB/DME RWY 4 ORIG–A.

Weno Island

Chuuk Intl
FM.
NDB–A ORIG...
FDC Date: 04/09/95

FDC 5/1526/TKK/ FI/P Chuuk Intl, Weno Island, FM. NDB–A ORIG...Add note... DME required. Alternate MNMS... 800–3. This becomes NDB–A ORIG–A.

Weno Island

Chuck Intl
FM.
NDB–B AMDT 4...
FDC Date: 04/09/95

FDC 5/1527/TKK/ FI/P Chuuk Intl, Weno Island, FM. NDB–B AMDT 4...Add note...DME required. Alternate MNMS... 800–3. This becomes NDB–B AMDT 4A.

Cartersville

Cartersville
Georgia
LOC RWY 19 AMDT 1A...
FDC Date: 04/05/95

FDC 5/1453/VPC/ FI/P Cartersville, Cartersville, GA. LOC RWY 19 AMDT 1A... Terminal route RMG VORTAC to EVZ NDB minimum altitude 3200. Procedure turn R side of course 005 outbound 3200 ft within 10 miles of EVZ NDB (IAF). This becomes LOC RWY 19 AMDT 1B.

Cartersville

Cartersville
Georgia
NDB OR GPS RWY 19 AMDT 3A...
FDC Date: 04/05/95

FDC 5/1454/VPC/ FI/P Cartersville, Cartersville, GA. NDB or GPS RWY 19 AMDT 3A... Terminal route RMG VORTAC to EVZ NDB minimum altitude 3200. Procedure turn R side of course 005 outbound 3200 ft within 10 miles of EVZ NDB (IAF). This becomes NDB or GPS RWY 19 AMDT 3B.

Brunswick

Malcom McKinnon
Georgia
VOR OR GPS RWY 4, AMDT 14A...
FDC Date: 04/11/95

FDC 5/1547/SSI/ FI/P Malcom McKinnon, Brunswick, GA. VOR or GPS RWY 4, AMDT 14A...S–4 MDA 460/ HAT 444 all cats. vis 1½ cat D. This becomes VOR or GPS RWY 4 AMDT 14B.

Hancock

Houghton County Memorial
Michigan
NDB OR GPS RWY 31 AMDT 11...
FDC Date: 04/12/95

FDC 5/1578/CMX/ FI/P Houghton County Memorial, Hancock, MI. NDB or GPS RWY 31 AMDT 11...MSA from CM LOM 090–270 3400, 270–090 2700. This is NDB or GPS RWY 31 AMDT 11A.

[FR Doc. 95–10385 Filed 4–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

[T.D. 95–35]

RIN 1515–AB20

Petroleum Refineries in Foreign Trade Subzones

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act to make specific provision for petroleum refinery subzones.

EFFECTIVE DATE: These regulations are effective October 24, 1995.

FOR FURTHER INFORMATION CONTACT: For Legal aspects: Bill Rosoff, Chief, Entry Rulings Branch (202)482–7040. For Operational aspects: Louis Hryniw, Regulatory Audit (202)927–1100.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1992 (57 FR 35530), Customs published a document in the **Federal Register** proposing to amend the Customs Regulations to add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988 which amended the Foreign Trade Zones Act, 19 U.S.C. 81c(d), to make specific provision for petroleum refinery subzones.

Briefly, as stated in the August 10, 1992, notice of proposed rulemaking, the statutory amendment obviates the need to determine exactly when and where in the manufacturing process crude and other feedstocks become other products. In so doing, it permits refiners as well as Customs to assess the relative value of such multiple products at the end of the manufacturing period during which such products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty. Also, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to a given crude or other feedstocks introduced into production during the period, to the extent that such products were producible (could have been produced) therefrom in the quantities removed from the subzone.

As a result of extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice of proposed rulemaking, Customs published a significantly revised notice on March 4, 1994 (59 FR 10342) and solicited additional public comment on the revised proposed rule.

The following discussion includes a summary of the various comments received in response to the March 4, 1994, notice of proposed rulemaking, together with an explanation and analysis regarding the sections to be added, eliminated or further revised. The final rule as revised is thereafter set forth.

Discussion of Comments

Comment: Two commenters suggested deletion of proposed § 146.92(a)(1), (2) and (3) because it is already covered in proposed § 146.93.

Customs Response: Customs agrees and, therefore, these three subsections have been deleted.

Comment: Three commenters suggested that the definition in proposed § 146.92(b) be expanded to include products from natural gas production and blendstocks and, additionally, that the definition state that Customs may add other merchandise to this definition by way of a ruling.

Two commenters suggested the inclusion of ''other hydrocarbon feedstocks, light olefins, and other aromatics and their derivatives'' in this definition.

Customs Response: Regarding the suggestion that this definition may be modified by a ruling, Customs regulations may not be modified or changed by way of a ruling. Any changes to the regulations would have to follow regulatory procedures. It is not clear to Customs how natural gas production and blendstocks apply to producibility. Any change to T.D. 66–16 to include feedstocks or products not listed must include supporting records and a technical explanation of the change. Therefore, this suggestion has not been adopted.

Comment: One commenter suggested that the word ''means'' in proposed § 146.92(c) be changed to ''is based on''. Another commenter suggested deletion of ''utilizing T.D. 66–16 (see § 146.92(h)), and'' and insertion of ''volumetric'' between ''any'' and ''loss''.

Customs Response: The suggested change has been adopted with respect to addition of the word ''volumetric'' and § 146.92(c) has been reworded. Customs disagrees that the phrase ''utilizing T.D. 66–16'' should be deleted. The word ''means'' should be retained since this section defines terms for use in this subpart.

Comment: The suggestion was made that proposed § 146.92(d) be re-worded to read as follows:

Final product means any product that is produced in a petroleum refinery subzone from feedstock processed therein, and thereafter removed therefrom or consumed within the zone.

Two commenters suggested that the phrase ''and or hydrocarbon product'' be inserted after ''product'' and before ''that''. Another commenter suggested that the phrase ''lost or destroyed in the subzone as provided in § 146.53(c)(1)(iv)'' be inserted after ''therefrom''.

Customs Response: The first suggestion regarding the rewording of § 146.92(d) has been adopted. The use of attribution by records requires that the amounts removed or consumed actually be measured; such method is not acceptable to account for unmeasured losses. This suggestion has not been adopted. It is Customs position that 19 U.S.C. 81c(d) applies only to crude petroleum products and not to hydrocarbons in general. Therefore, this suggestion was not adopted.

Comment: Two commenters suggested that the words ''or manufacturer'' be inserted after ''refiner'' and that the words ''production facility'' be inserted after ''refinery'' in proposed § 146.92(e). One commenter suggested deletion of the phrase ''for which * * * subzone'' because attribution is addressed

elsewhere in the regulations. Another commenter recommended that the word ''for'' after ''month'' be deleted and replaced with ''within''.

Customs Response: Regarding the first suggestion, the purpose of these regulations is to implement 19 U.S.C. 81c(d). That statutory provision only applies to crude petroleum refineries in foreign trade zones. Therefore, there is no basis to extend these regulations to ''production facilities.'' The suggestion to remove the reference to final products consumed or removed from the subzone has not been adopted since the statute provides an attribution formula to be used at specific subzones. The word ''for'' is shorter than ''within'' and there is no change in substance.

Comment: One commenter proposed addition of a definition of ''Petroleum'' to read as follows:

Petroleum means a feedstock listed on the top line of the tables set forth in T.D. 66–16 and includes any hydrocarbon feedstock produced from natural gas liquids or comprised of natural gas liquids.

Customs Response: Customs disagrees that such a definition is necessary and, therefore, has not included this definition in the final rule.

Comment: Two commenters recommended that the phrase ''listed on the top line of the tables set forth in T.D. 66–16'' be replaced with ''as defined herein into final products as defined herein''. One commenter suggested that the following phrase be added at the end of proposed § 146.92(f):

* * * and includes any facility that processes a hydrocarbon feedstock utilizing one or more of the units in the definition of a refinery operating unit.

Two other commenters advocated re-naming this definition ''Petroleum refinery or production facility'' and then adding the following:

Production facility means a facility that primarily converts hydrocarbon feedstocks, light olefins, aromatics and their derivatives into primarily light olefin products such as ethylene or propylene or other products such as toluene, benzene, or derivatives of olefins and aromatic products such as cyclohexane, acrylates, alcohols, caprolactam, or other petrochemical products.

Customs Response: As previously stated, there is no authority to extend the application of 19 U.S.C. 81c(d) beyond a crude petroleum refinery.

Comment: Two commenters proposed deletion of ''market'' and ''each month'' from the definition in proposed § 146.92(g).

Customs Response: Customs disagrees with this suggestion. A refiner has the option to use the market value of each product or a published standard value such as Platts.

Comment: Two commenters suggested addition of the phrase ''is an inventory control'' before the word ''method'' in proposed § 146.92(h) and replacement of the phrase ''set forth in T.D. 66–16'' with ''as verified and adopted by the Secretary of the Treasury''.

Customs Response: The suggested changes have not been adopted. Producibility is not an inventory control because it does not reflect actual feedstocks in inventory at any given time. It is a statutory method to account for import duties owed on privileged foreign feedstocks. The Industry Standards of Potential Production are set forth in T.D. 66–16 and, even if that Treasury Decision is modified in the future, the reference will always be to ''T.D. 66–16 as modified by T.D.——''.

Comment: Four commenters suggested replacement of the definition in proposed § 146.92(i) with the following language:

Relative value means a factor assigned to each final product attributed to the separation from a privileged foreign feedstock equal to the ratio of its ''price of product'' to the average ''price of product'' for all final products at the time of separation.

Customs Response: Customs disagrees with this suggestion because ''relative value'' is a dollar value assigned to products and not a factor. Therefore, the definition remains as proposed.

Comment: Two commenters suggested addition of ''or production operating unit'' to the title of § 146.92 and insertion of the following language in the definition:

Production operating unit means a unit in a production facility in which feedstock is processed such as a thermal cracking furnace or distillation tower.

Four commenters suggested deletion of proposed § 146.92(j) (definition of ''Refinery operating unit'') in its entirety. Alternatively, one commenter suggested the definition should read as ''a facility within a refinery wherein feedstocks lose their unique physical identity or may undergo changes in physical characteristics''. Another commenter agreed with the proposed definition but also suggested adding the words, ''including, but not limited to, API gravity, distillation traits, chemical characteristics, etc.'' Yet another commenter proposed deletion of any reference to ''operating unit'' in this section and in proposed §§ 146.93(a) (1) and (4), 146.93(b), 146.94(a), and 146.96(a)(1).

Customs Response: Customs agrees with the position asserted by the commenters that the manufacture and manipulation of feedstocks begins on admission to a refinery subzone because a refiner deliberately mixes various feedstocks on admission to achieve optimum characteristics for processing. For that reason, proposed § 146.92(j) is unnecessary and has been deleted. Based on the assertion by refiners that the mixing occurs on admission, the admission of feedstock in nonprivileged status will be binding and a post-admission request for privileged status will be denied unless the refiner establishes that the feedstock was not manipulated or manufactured to effect a change in tariff classification. A new § 146.93(e) has been added to reflect this position.

Comment: Two commenters suggested revising proposed § 146.92(k) to read as follows:

Time of separation in the case of privileged foreign feedstock means the manufacturing period in which such feedstock is deemed to have been separated into two or more final feedstocks.

Customs Response: Customs disagrees with this suggestion since it merely adds words without changing the substance of the definition.

Comment: Three commenters proposed inclusion of the following language in proposed § 146.93(a) immediately following ''Attribution'' and before ''(1) Producibility'':

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery zone must be attributed to feedstock processed within said petroleum refinery zone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized inventory control methods set forth in this section. Records may be maintained on a weight or volume basis.

Two commenters suggested that the phrase ''have been introduced into a refinery operating unit'' in proposed § 146.93(a)(1) be replaced with ''are eligible for attribution, as set forth in paragraph (b), of this section * * *''. Another commenter proposed replacement of the same phrase with ''are eligible for attribution, as set forth in paragraph (a)(4) of this section * * *''. A third commenter recommended replacement of the same phrase with the words ''are eligible for attribution * * *''.

Two other commenters suggested the inclusion of the phrase ''or production operating unit'' after ''refinery operating unit''.

Customs Response: Because Customs accepts the assertions of refiners that

they begin to manipulate all feedstocks on admission to achieve an optimum set of characteristics for processing, Customs has modified § 146.93(a)(1) accordingly.

Comment: Two commenters recommended that ''[i]n addition, an operator may use such other inventory control method(s) as approved by the Secretary of the Treasury that protects the revenue'' be added at the end of proposed § 146.93(a)(3).

Customs Response: Customs disagrees. The provision for additional methods is covered by § 146.96.

Comment: Two commenters suggested re-designating proposed § 146.93(a)(4) as (b). The commenters propose the section should read as follows:

(b) *Feedstock eligible for attribution.* Feedstock admitted into the refinery zone or subzone is eligible for attribution to any final product in accordance with the operator's inventory control method.

One commenter suggested the entire proposed section be deleted and replaced with:

(4) *Feedstock eligible for attribution.* Feedstock admitted into the refinery zone or subzone is eligible for attribution to the extent that such feedstock is not remaining in tank inventory at the end of the manufacturing period as determined in accordance with the operator's zone procedure. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the zone, minus ending inventory.

Customs Response: Customs has incorporated some of the suggested language and, therefore, § 146.93(a)(4) (redesignated as § 146.93(b)) has been reworded.

Comment: Four commenters suggested redesignating proposed § 146.93(b) as (c) and replacing the phrase ''introduced into a refinery operating unit'' with ''eligible for attribution under § 146.93(b) * * *''.

Customs Response: Customs agrees and has so modified the wording of this section (redesignated as § 146.93(d)).

Comment: Four commenters suggested redesignating proposed § 146.93(c) as (d), and deletion of the sentence ''(a)d valorem * * * relative value calculation'' because duties are not relevant to the relative value calculation.

Customs Response: Customs disagrees and this language has been retained.

Comment: One commenter recommended deletion of proposed § 146.94(a) in its entirety. Another commenter suggested that a refiner should only be required to maintain appropriate inventory records to substantiate feedstocks processed and remaining in ending inventory. Two other commenters suggested that the section should read as follows:

(a) *Feedstock processed.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock eligible for attribution under § 146.93(a)(4) and in accordance with the operator's selected inventory control method.

Another variation was offered by a commenter who suggested the section should read as follows:

(a) *Feedstock processed.* The operator shall maintain appropriate inventory records to establish the quantity of feedstock eligible for attribution under § 146.93(a)(4) during each manufacturing period.

Customs Response: Customs disagrees that this subsection should be deleted in its entirety. However, Customs does agree with the suggested changes and § 146.94(a) has been reworded to reflect the refiners' assertion that feedstocks are manipulated or manufactured on admission.

Comment: Two commenters proposed replacement of the language in proposed § 146.94(b) with the following:

The operator shall maintain records to establish the quantity of products consumed in or removed from the zone or subzone during the entry period.

Another commenter suggested replacing this proposed section with:

(b) *Final product removed, consumed, lost or destroyed.* The operator shall maintain appropriate inventory records to establish the quantity of final products removed from, consumed in, lost, or destroyed in the subzone during the manufacturing period.

Customs Response: Customs disagrees with the suggested changes for the reasons noted in the Customs Response with respect to § 146.92(d).

Comment: Three commenters suggested deletion of any references to ''week'' in proposed § 146.94(c) and insertion of ''approved entry period'' instead.

Customs Response: As was explained in the March 4, 1994, **Federal Register** notice, while a manufacturing or accounting period may be greater than a week, there is no authority to permit a consumption entry covering products removed from a zone to exceed one week. Thus, the language of § 146.94(c) remains in substance as originally proposed.

Comment: Two commenters suggested deletion of the phrase ''* * * is dutiable if entered for consumption unless otherwise exempt from duty'' in proposed § 146.94(d) and that it be replaced with ''shall be treated as foreign merchandise when entered for consumption''.

Customs Response: The relevancy of this suggested change is not understood and, therefore, the suggestion has not been adopted. All merchandise, except for domestic status merchandise, when entered for consumption is foreign merchandise.

Comment: One commenter suggested that the title to proposed § 146.94(e) should read ''Attributing gain or loss; acceptable methods'' instead of the proposed title. Another commenter remarked that the regulations should specify that determination of gain or loss may be done either at time of separation (production) or at time of removal from or consumption in the zone.

Customs Response: Neither of these suggested changes have been adopted since they merely add words without changing the substance.

Comment: One commenter suggested that the word ''account'' in proposed § 146.94(e)(1) be replaced with ''attribute''.

Customs Response: Customs disagrees. Attribution refers to matching actual measured amounts of privileged foreign feedstock consumed in, or removed from, the subzone refinery in the form of final products against the limits imposed by T.D. 66–16 or other approved method.

Comment: One commenter proposed insertion of the phrase ''or loss'' after ''volume gain'' in proposed § 146.94(e)(2) and insertion of the following at the end of the section:

The operator may determine the feedstock factor using values associated with the total removals from and consumption in the zone or subzone for the period in lieu of using such values for production during the period.

Customs Response: Customs agrees with respect to the first suggestion. Regarding the second suggestion, it is not clear which ''period'' the commenter is referring to. Customs has agreed with prior comments that the manufacturing period will be up to a calendar month. Therefore, this change was not adopted.

Comment: One commenter suggested insertion of the following language at the end of proposed § 146.94(e)(3):

* * * at either:

(A) The time of separation, or

(B) The time of removal from or consumption in the zone or subzone.

Customs Response: Customs disagrees. As noted above, prior commentors had requested that the

manufacturing period not exceed a calendar month and Customs revised the regulations accordingly.

Comment: A commenter suggested that deviations from T.D. 66–16 be provided for.

Customs Response: Customs agrees and has amended § 146.95(a)(3) to permit deviations from T.D. 66–16 with approval from Customs. It requires that any such deviation not be inconsistent with any related claim for drawback under 19 U.S.C. 1313.

Comment: Two commenters advocated incorporation of the entire proposed § 146.95 into proposed § 146.96.

Customs Response: Customs agrees. Therefore, proposed § 146.96 is now redesignated as § 146.95.

Comment: Three commenters suggested that any references to ''listed in'' in proposed § 146.95(b) should be replaced with ''provided for''.

Customs Response: Customs agrees with this suggestion and has so changed § 146.95(b) (redesignated as § 146.95(a)(2)).

Comment: One commenter suggested the following: replacement of the words ''using the * * * in T.D. 66–16'' in proposed § 146.96(a)(1) with the provisions of § 146.95—to be denominated as new subparagraphs (2) and (3); replacement of the words ''not listed'' with the words ''not provided for''; and replacement of the reference to ''T.D. 66–16'' with the words ''industry standards of potential production on a practical operating basis''.

One commenter noted that proposed § 146.96(a)(1) should not be limited to feedstocks introduced into the refinery operating unit. Another commenter suggested replacing the phrase ''introduced into a refinery operating unit'' with ''eligible for attribution''.

A commenter proposed deletion of the sentence ''The operator is * * * prior period.'' and the phrase ''* * * using the * * * T.D. 66–16''.

Customs Response: Customs does not agree that references to T.D. 66–16 should be deleted from these regulations. Attribution uses the industry standards of potential production on a practical operating basis as set forth in T.D. 66–16. End products which are admitted into the zone and subsequently entered for consumption without any further processing are eligible for attribution, and the text has been modified to reflect this. The definition of a refinery in § 146.92(f) refers to feedstocks and products listed in T.D. 66–16. Thus, to avoid confusion the same terminology is used here.

Comment: Two commenters suggested deletion of proposed § 146.96(a)(2) in its entirety. Other commenters suggested moving the example in this proposed section to the Appendix.

Customs Response: Customs disagrees that § 146.96(a)(2) (redesignated at § 146.95(b)) should be deleted. However, the example has been moved to the appendix.

Comment: All of the comments received suggested that the appendix include some introductory language to the effect that where there is any inconsistency between an example and the regulation, the regulation prevails.

Customs Response: Customs agrees and has incorporated this change.

Comment: Four of the comments received suggested that any references to ''actual production records'' and ''recordation'' in proposed § 146.96(b) be changed to ''refinery accounting records'' and ''accounting principles'', respectively. The suggestion was also made that the example be included in the appendix.

Customs Response: Customs disagrees regarding the rewording of § 146.96(b) (redesignated as § 146.95(c)). Accounting records could mean records that summarize net activity over a period. Customs needs to verify actual amounts admitted into, removed from, or consumed in a refinery subzone. Customs also needs to know if any adjustment was made to those amounts recorded rather than a period-end summary which nets the amount without disclosing the existence of any adjustment. The example is more appropriately placed within the section because it illustrates the precise principle applied.

Comment: One commenter proposed including introductory language in proposed § 146.97(a) as follows:

An operator may use the FIFO method of inventory accounting. The use of this method is illustrated in the appendix to this subpart.

Customs Response: Customs disagrees because § 146.93(a)(3) already provides that FIFO may be used as an inventory method.

Comment: Most commenters suggested addition of a new § 146.97(d) to provide as follows:

(d) *Appeal to the Commissioner.* In the event that the Director, Office of Regulatory Audit fails to approve a request under paragraph (c) of this section, an operator may file an appeal with the Commissioner of Customs for further review. Denial by the Commissioner of Customs may be appealed to the Court of International Trade under 28 U.S.C. 1581(i).

Customs Response: Customs disagrees with this suggestion. The proposal would change the statutory scope of jurisdiction of the Court which is beyond this rulemaking.

Comment: One commenter noted that the proposed regulations do not address zone-to-zone transfers and accounting for non-privileged foreign goods.

Customs Response: It is Customs position that these regulations are not the appropriate vehicle for addressing the issue of accounting for non-privileged status merchandise. Additionally, these regulations do not authorize the use of zone-to-zone transfers where the start of a manufacturing period in one zone refinery would be carried over to another zone refinery. Customs would consider promulgating regulations to handle such transfers but only if interested parties submitted detailed mathematical examples, with dates, showing how such transfers would be recorded by both the first and subsequent refineries, together with how the end products that are removed from the last zone would be entered for consumption, consumed in the zone, or withdrawn for exportation as defined in §§ 146.92 (e), (g), (i), and (j). Such a proposal must discuss the responsibilities of each refiner in the transfer chain with respect to recordkeeping and duty liability if there was a failure to maintain these records by one or more of the transferors.

Comment: A commenter noted that privileged foreign merchandise ''liquidations'' are not liquidations within the meaning of 19 U.S.C. 1500. Customs has the right to correct the classification and appraisement until the bulletin notice of liquidation is posted and the protest period begins. Prior to such final notice, the importer has the right and obligation to change classification when conditions warrant. Such change of classification does not affect zone status.

Customs Response: Customs basically agrees and has made modified § 146.65 to clarify this point.

Conclusion

Based on the above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with the following changes: § 146.65 is revised to reflect Customs authority under 19 U.S.C. 1500 to fix the final classification of merchandise classified as privileged merchandise; § 146.91 is revised to eliminate unnecessary references to eligible feedstock (the second sentence) and to include a new third sentence to clarify that these regulations do not address

zone-to-zone transfers; in § 146.92, one definition is deleted (§ 146.92(j)) and one definition is added (§ 146.92(k)); § 146.93 is expanded to include privileged status after admission (paragraph (e)) and new paragraph (b) is added to clarify feedstock eligible for attribution; in § 146.94, paragraph (a) is revised to clarify recordkeeping requirements applicable to feedstocks admitted into the subzone; and in § 146.95, language is added to subparagraphs (a)(3) (i) and (ii) regarding attribution to product or feedstock not listed in T.D. 66–16, and to subparagraphs (b) regarding Customs use of refinery operating records. Other changes to the proposed regulations involve the renumbering of two provisions caused by the incorporation of proposed § 146.95 into the text of proposed § 146.96, which is redesignated as § 146.95; a corresponding renumbering changes occur in proposed § 146.97, which is now redesignated as § 146.96. Also, the example contained in proposed § 146.96(a)(2) is moved to the appendix, which contains expanded examples.

The Regulatory Flexibility Act and Executive Order 12866

Based on the supplementary information set forth above, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515–0189. The estimated average annual burden associated with this collection is 18,824 hours, or 2,353 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Entry, Exports, Foreign-trade zones, Imports, Penalties, Petroleum, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, the proposed amendments to part 146 of the Customs Regulations (19 CFR part 146), which were published at 59 FR 10342 on March 1, 1994, are adopted as a final rule as set forth below.

PART 146—FOREIGN-TRADE ZONES

1. The general authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

2. In § 146.65, paragraph (a)(1) is amended by adding a sentence at the end to read as follows:

§ 146.65 Classification, valuation, and liquidation.

(a) *Classification*.—(1) * * * Notwithstanding the grant of privileged status, Customs may correct any misclassification of any such entered merchandise when it posts the bulletin notice of liquidation under § 159.9 of this chapter.

* * * * *

3. Part 146 is amended by adding a new subpart H and appendix to read as follows:

Subpart H—Petroleum Refineries in Foreign-Trade Subzones

Sec.
146.91 Applicability.
146.92 Definitions.
146.93 Inventory control and recordkeeping system.
146.94 Records concerning establishment of manufacturing period.
146.95 Methods of attribution.
146.96 Approval of other recordkeeping systems.

Appendix to Part 146—Guidelines for Determining Producibility and Relative Values for Oil Refinery Zones

Subpart H—Petroleum Refineries in Foreign-Trade Subzones

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign-trade zone or subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart. It does not cover zone-to-zone transfers in which the fact of removal from one zone is ignored.

§ 146.92 Definitions.

(a) *Attribution.* ''Attribution'' means the association of a final product with its source material.

(b) *Feedstocks.* ''Feedstocks'' means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor.* ''Feedstock factor'' means the relative value of final products utilizing T.D. 66–16 (see § 146.92(h)), and which takes into account any volumetric loss or gain.

(d) *Final product.* ''Final product'' means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period.* ''Manufacturing period'' means a period selected by the refiner which must be no more than a calendar month basis, for which attribution to a source feedstock must be made for every final product made, consumed in, or removed from the refinery subzone.

(f) *Petroleum refinery.* ''Petroleum refinery'' means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66–16 into a product listed in the left column of the tables set forth in T.D. 66–16.

(g) *Price of product.* ''Price of product'' means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility.* ''Producibility'' is a method of attributing products to feedstocks for petroleum manufacturing in accordance with the Industry Standards of Potential Production set forth in T.D. 66–16.

(i) *Relative value.* ''Relative value'' means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Time of Separation.* ''Time of separation'' means the manufacturing period in which a privileged foreign status feedstock is deemed to have been

separated into two or more final products.

(k) *Weighted Average.* ''Weighted average'' means the relative value of merchandise, which is determined by dividing the total value of shipments in a given period by the total quantity shipped in the same given period. See example in section VI of the appendix to this part.

§ 146.93 Inventory control and recordkeeping system.

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery subzone must be attributed to feedstock admitted into said petroleum refinery subzone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized methods set forth in this section. Records must be maintained on a weight or volume basis.

(1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which are eligible for attribution as set forth in this section during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.95(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the appendix to this part.

(b) *Feedstock eligible for attribution.* Only a feedstock that has been admitted into the refinery subzone is eligible for attribution. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the subzone, and less ending inventory.

(c) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock eligible for attribution during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (d) of this section.

(d) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(e) *Privileged status after admission.* Nonprivileged status feedstock is eligible for privileged status only if the request shows to the satisfaction of the Customs Service that there was no manipulation or manufacture of the feedstock to change its tariff classification before the request is granted. The absence of such manipulation or manufacture can be shown by demonstrating that the feedstock was placed in an empty tank, in a tank that contained only feedstock with the same nominal specifications or providing a sample which shows there was no change in tariff status. The existence of negligible amounts of other feedstocks may be disregarded only in accordance with § 146.95(b). A request for after-admission privileged foreign status shall be denied unless the feedstock's tank records from admission to the time that the request is made accompany the request. A refiner who makes such a request shall not put any other feedstock having different nominal specifications into the tank until the request for privileged status is granted. The Customs Service will deny or revoke a post-admission request if a refiner fails to retain the integrity of the feedstock in the tank.

(f) *Consistent use required.* The operator must use the selected method, measurement (weight or volume), and the price of product consistently (see § 146.92(g) of this subpart and paragraph (a) of this section).

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock admitted into the refinery subzone.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock(s) eligible for attribution under § 146.93(b) and in accordance with the operator's selected attribution method.

(b) *Final product consumed in or removed from subzone.* The operator must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see section II of the appendix to this part).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a non-privileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods.*—(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain or loss.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

§ 146.95 Methods of attribution.

(a) *Producibility.*—(1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks which were eligible for attribution during the current or prior manufacturing period. Attribution of final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66–16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(3) *Attribution to product or feedstock not listed in T.D. 66–16.* (i) For purposes

of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate district director. The district director shall refer the request to the Director, Office of Regulatory Audit (''ORA''), who will verify the refiner's records and will coordinate with the Director, Office of Laboratories and Scientific Services (''OLSS''). The Director, ORA, shall either approve or deny the request. If the request is approved, the Director, ORA, shall publish a modification of T.D. 66–16. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, the operator shall use its actual operating records to determine attribution and any necessary relative value calculation upon the Customs Service demand and subject to verification.

(ii) An operator may attribute a final product to a feedstock in excess of the amount allowed under T.D. 66–16, when authorized by Customs, without losing the ability to attribute under T.D. 66–16 for all other feedstock-final product combinations. The operator must use its actual production records for the requested feedstock-final product combination. The operator must agree in writing that it will not, and it will not enable any other person, to file a drawback claim under 19 U.S.C. 1313 inconsistent with those actual production records for that feedstock-final product combination. The operator shall file its request in accordance with paragraph (a)(3) of this section. The Director, ORA, and the Director, OLSS, must determine whether T.D. 66–16 needs to be modified and shall publish in the Customs Bulletin each approval granted under this paragraph and request public comments with each such approval.

(4) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock a relative value must be assigned (see section IV of the appendix to this part).

(b) *Refinery operating records.* An operator may use the actual refinery operating records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's operating conventions to the extent that the operator demonstrates that it actually uses these conventions in its refinery operations. Whatever conventions are elected by the operator, they must be used consistently in order to be acceptable to Customs. Additionally, Customs may use these records to test the validity of admissions into the subzone, consumption within and removals from the subzone.

Example. If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

§ 146.96 Approval of other recordkeeping systems.

(a) *Approval procedure.* An operator must seek prior approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

Appendix to Part 146—Guidelines for Determining Producibility and Relative Values for Oil Refinery Zones

Where an example is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency. Alternative formats are also acceptable so long as they are consistent with the provisions of this part.

I. Attribution Using Producibility Showing Manufacturing Periods From Admission to Removal Within a Calender Month.

Volume losses and gains accounted for by weight.

Day 1

Receipt into the refinery subzone during a 30-day month:

50,000 pounds privileged foreign (PF) class II crude oil.
50,000 pounds PF class III crude oil.
50,000 pounds domestic status class III crude oil.

Day 10

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 10. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.V. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds ($50,000 \times .30$). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds ($50,000 \times .40$). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Receipt in the refinery subzone:

50,000 pounds PF status class I crude oil.
50,000 pounds PF status class IV crude oil.

Day 30

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption.
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft.
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that were admitted on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 30. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because

the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that were admitted into the refinery subzone Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 × .20). Likewise, the class IV crude oil could produce aviation gasoline in an amount up to 8,500 pounds (50,000 × .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000 − 5,000 × .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300 × .65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of the 10,000 pounds of jet fuel (22,300 × .65). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 × .50).

II. Attribution on a FIFO Basis

(Accounting for volume losses or gains by the weight method)

Day 1–5

Transfer, into the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

Day 6

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1–5.

Day 10

Transfer, into the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

Day 6–15

Transfer, into the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

Day 16

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1–5.

Day 17

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1–5 and 75,000 pounds of domestic Class III crude oil from Day 6–15.

Day 16–20

Transfer, into the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) Class III crude oil, equivalent to 50,000 pounds.

Day 22

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6–15 and 35,000 pounds of PF Class III crude oil from Day 16–20.

Day 21–25

Transfer, into the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

Day 30 (End of the Manufacturing Period)

It is determined that during the manufacturing period just ended, that 34 barrels of fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was lost in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–20 will be the first to be attributed during the next manufacturing period.

III. Relative Value Calculation

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

	A Lbs	B BBLS	C $/BBL	D Product value	E R.V. Factor	F R.V. BBL	G Dutiable BBL
Residual oil	40,000	119	15.00	1,785	.9047	108	108
Asphalt	5,000	14	13.00	182	.7840	11	11
Motor gasoline	5,000	20	26.00	520	1.5682	31	31
Totals	50,000	153	.....	2,487	.....	150	150

A=Pounds Attributed.
B=Equivalent Barrels.

C=Price of Product.
D=B×C.
E=C/(Total of Column D/Attributed Crude BBLS).
Residual Oil RV Factor=15.00/(2,487/150)=.9047.
F=B×E.
G=Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLS) of PF Class II crude entered customs territory duty equals $7.88 (150×.0525).

Feedstock factor calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

	Lbs	BBLS	$/BBL	Product value	Feedstock factor	R.V. BBL	Dutiable BBL
Jet Fuel	35,000	125	27.00	3,375	1.1030	138	0
Fuel	10,000	34	12.00	408	0.4902	17	0
Consumed Process Loss	1,500	5	12.00	60	0.4902	2	0
Totals	46,500	164		3,843		157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable (assume refinery not barred by duty-free consumption restriction). Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

IV. Attribution to Privileged Foreign Feedstock; Relative Value; Monthly Manufacturing Period, Weekly Entries, Attribution to a Prior Period; Volume Loss or Gain Shown by Volume Differences.

An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet Fuel (deemed exported on international flights)	20,000
Gasoline—Domestic Consumption	15,000
Duty-free certified as emergency war material	10,000
Petroleum coke exportations	10,000
Distillate for consumption	5,000
Petrochemicals exported	10,000
Total removals	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude	20,000
Class III PF crude	35,000
Class III D (domestic) crude	20,000
Class III NPF (nonprivileged foreign crude	20,000
	95,000

During August the operator produced from those feedstocks:

Jet	35,000
Gasoline	40,000
Petroleum Coke	10,000
Distillate	5,000
Petrochemicals	15,000
	105,000

There is a gain of 105,000 − 95,000=10,000

Using the tables in T.D. 66–16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petrolum coke	Distillate	Petro-chem-ical
Class II PF Crude	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF Crude	35,000	24,500	31,850	14,000	31,150	10,150
Class III D Crude	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF Crude	20,000	14,000	18,200	8,000	17,800	5,800

Feedstock factors are calculated:

	Barrels	Value barrels	Value	Feedstock factors
Gasoline	40,000	$25	$1,000,000	.9117
Jet Fuel	35,000	23	805,000	.8388
Distillate	5,000	20	100,000	.7294
Petroleum Coke	10,000	10	100,000	.3647
Petrochemicals	15,000	40	600,000	1.4587

	Barrels	Value barrels	Value	Feedstock factors
	105,000	.....	2,605,000	
Gain	– 10,000	$2,605,000	.....	.....
Total	[1] 95,000	=$27.42 average value p/bbl		

Using the feedstock factor the refiner makes the following attributions:

Jet Fuel	24,192	(20,291 feedstock attributed to Class III PF Crude).
	10,808	Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used).
	35,000	
Gasoline	5,000	(4,559 feedstock attributed to Class III PF Crude).
	5,000	Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used).
	15,000	(13,676 feedstock attributed to Class III D Crude).
Petroleum Coke	8,418	(3,070 feedstock attributed to Class II PF Crude).
	1,582	Class III NPF Crude (attribution of 577 solely for purposes of accounting for the amount of NPF used).
	10,000	
Distillate	5,000	(3,647 feedstock attributed to Class III Domestic).
Petrochemicals	3,975	(5,800 feedstock attributed to Class III NPF Crude).
	6,025	(8,789 feedstock attributed to Class III PF Crude).
	10,000	

V. Weekly Entry, Weekly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Week.

On the weekly estimated production CF 3461, the refiner is required to provide a pro forma invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. For example, on CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

Product week 1	PF shipments (MBBLS)	Value/barrel (platts)	Total value
Motor Gasoline	20,000	$35	$700,000
Total Alkylate	25,000	35	875,000
Heavy Reformate	60,000	35	2,100,000
Reformer Feed	110,000	35	3,850,000
Raffinates	200,000	35	7,000,000
Jet Fuel	200,000	35	7,000,000
Total	615,000	.....	$21,525,000

Attributed Feedstock—Class III Crude: 615,000@ $105=$64,575 (estimated duties)

During that week the refiner actually removes the following products and reports those on the CF 7501 filed within 10 business days after the CF 3461 is filed. Column 3 is the actual ''weighted average'' value for the manufacturing period, therefore, no reconciliation is necessary.

1 Product	2 PF Shipments (mbbls)	3 Value/ barrel (wt. avg.)	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distribu. (5)×(2)	7 Liq. duties (6)×(10) (9)
Week 1:						
Motor Gasoline	19,977	$35.70	$713,179	1.104545	22,065	$2,317
Total Alkylate	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel	168,433	30.04	5,059,727	.929426	156,546	16,437
Total	540,053	.....	16,756,891	.....	518,451 (9)	54,437 (10)

Class III Crude Consumed 518,451×$.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Consumed=$16,756,891÷518,451=$32.321 (8)

This example shows volumetric gain of 21,602 mbbls. However, in that PF was requested, liquidated duties are only on actual feedstock (class III crude) used in the refining process. (518,451 @ $.105=$54,437).

VI. Weekly Entry, Monthly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Month.

For example, on the CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (platts)	4 Total value
Week 1:			
Motor Gasoline	20,000	$35	$700,000
Total Alkylate	25,000	35	875,000
Heavy Reformate	60,000	35	2,100,000
Reformer Feed	110,000	35	3,850,000
Raffinates	200,000	35	7,000,000
Jet Fuel	200,000	35	7,000,000
Total	615,000	.....	21,525,000

Attributed Feedstock—Class III Crude: 615,000 @ $.105=$64,575 (estimated duties)

During the week the refiner actually removes the following products and reports those on the CF 7501 filed within 10 business days after the CF 3461 is filed. The reported relative values may be an estimate based on Platts, prior period actual prices, or the refiner's transfer prices. For this example, the estimates are based on the refiner's actual transfer prices. Listed below are the data to be shown on the weekly CF 7501s with actual quantities shipped and estimated values for weeks 1–5.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimates)	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distrib. (5)×(2)	7 Liq. duties (6)×(10) (9)
Week 1:						
Motor Gasoline	19,977	$35.70	$713,179	1.104545	22,065	$2,317
Total Alkylate	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel	168,433	30.04	5,059,727	.929426	156,546	16,437
Total	540,053	.....	16,756,891	.....	518,451 (9)	$54,437 (10)

Class III Crude Consumed 518,451×$.105=$54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Consumed=$16,756,891÷518,451=$32.321 (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 2:						
Motor Gasoline	20,651	$36.90	$762,022	1.145429	23,654	$2,484
Total Alkylate	23,435	44.25	1,036,999	1.373584	32,190	3,380
Heavy Reformate	59,819	30.35	1,815,507	.942108	56,358	5,918
Reformer Feed	101,167	30.10	3,045,127	.934347	94,526	9,925
Raffinates	172,317	29.30	5,048,888	.909514	156,726	16,456
Jet fuel	165,291	30.70	5,074,434	.952972	157,519	16,539
Total	542,680	.....	$16,782,977	.....	520,973	$54,702

Class III Crude Consumed 520,973×$.105 = $54,702
Volumetric Gain 21,707
Avg. Value/Barrel Crude Consumed = $32.215

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 3:						
Motor Gasoline	18,689	$34.90	$652,246	1.091819	20,405	$2,142
Total Alkylate	21,511	40.25	865,818	1.259190	27,087	2,844
Heavy Reformate	57,371	30.90	1,772,764	.966682	55,460	5,823
Reformer Feed	99,707	30.90	3,080,946	.966682	96,386	10,121
Raffinates	168,112	29.65	4,984,521	.927577	155,938	16,374

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Jet Fuel	172,092	29.85	5,136,946	.933834	160,707	16,874
Total	537,482	.....	$16,493,241	.....	515,983	$54,178

Class III Crude Consumed 515,983×$.105 = $54,178
Volumetric Gain 21,499
Avg. Value/Barrel Crude Consumed = $31.965

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 4:						
Motor Gasoline	21,905	$32.85	$719,579	1.027237	22,502	$2,363
Total Alkylate	22,552	38.75	873,890	1.211733	27,327	2,869
Heavy Reformate	58,116	29.60	1,720,234	0.925607	53,791	5,648
Reformer Feed	101,058	29.40	2,971,105	0.919353	92,908	9,755
Raffinates	169,823	30.15	5,120,163	0.942806	160,110	16,812
Jet Fuel	171,493	31.05	5,324,858	0.970949	166,511	17,484
Total	544,947	.....	$16,729,829	.....	523,149	$54,931

Class III Crude Consumed 523,149×$.105 = $54,931
Gain 21,798
Avg. Value/Barrel Crude Consumed = $31.979

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 5:						
Motor Gasoline	8,990	$37.25	$334,878	1.136260	10,215	$1,073
Total Alkylate	9,984	45.10	450,278	1.375713	13,735	1,442
Heavy Reformate	25,351	31.50	798,557	0.960864	24,360	2,558
Reformer Feed	43,492	31.35	1,363,474	0.956288	41,592	4,367
Raffinates	75,172	29.95	2,251,401	0.913583	68,677	7,211
Jet fuel	75,795	30.56	2,316,295	0.932190	70,654	7,418
Total	238,784	.....	$7,514,883	.....	229,233	$24,069

Class III Crude Consumed 229,233×$.105 = $24,069
Gain 9,551
Avg. Value/Barrel Crude Consumed = $32.783

As provided in the regulations, the refiner files an amended CF 7501 for each week based on the refiner's actual weighted average values for the month, as shown below.

Product	Value/ barrel (MBBLS)
Month End:	
Motor Gasoline	$35.27
Total Alkylate	41.84
Heavy Reformate	30.66
Reformer Feed	30.54
Raffinates	29.69
Jet Fuel	30.42

RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (wt. avg.) actual	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5)×(2)	7 Amended wt. avg. duties (6)×(10) (9)
Motor Gasoline	19,977	$35.27	$704,589	1.095716	21,889	$2,298
Total Alkylate	22,907	41.84	958,429	1.299823	29,775	3,126
Heavy Reformate	58,164	30.66	1,783,308	.952499	55,401	5,817
Reformer Feed	100,279	30.54	3,062,521	.948771	95,141	9,990
Raffinates	170,293	29.69	5,055,999	.922365	157,072	16,493

RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES—Continued

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (wt. avg.) actual	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5)×(2)	7 Amended wt. avg. duties (6)×(10) (9)
Jet Fuel	168,433	30.42	5,123,732	.945043	159,176	16,713
Total	540,053	.....	$16,688,578	.....	518,454 (9)	54,437 (10)

Class III Crude Consumed = 518,454 × $.105 = $54,437
Volumetric Gain 21,599
Avg.Value/Bbl Crude Consumed = $16,688,578 ÷ 518,454 = $32.189 (8)

Note: No change in amended total duties, because duty is computed on total quantity of class III crude used. The difference is amongst the various products, i.e., estimated weekly CF 7501 duties paid for Motor Gasoline was $2,317, while the reconciled amount as shown above is $2,298. Additional duties owed or refunds due would depend on the reconciliation of the weekly entry as an entirety.

VII. Weekly entry, monthly manufacturing period, relative values calculated on prior manufacturing period's actual weighted average values. The prior period (PP) values are set forth below:

Product	Value/Barrel (wt. avg.)
Motor Gasoline	§ 35.28
Total Alkylate	41.90
Heavy Reformate	31.78
Reformer Feed	30.02
Raffinates	31.10
Jet Fuel	28.80

Thereafter, the information provided or both the CF 3461 and CF 7501 filed for each weekly entry with respect to relative values would remain the same. The only estimated amount would be the quantity to be removed on the CF 3461 as shown below. On the CF 3461 the refiner estimates the following shipments and uses a prior manufacturing period's actual weighted average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value
Week 1			
Motor Gasoline	20,000	$35.28	$705,600
Total Alkylate	25,000	41.90	1,047,500
Heavy Reformate	60,000	31.78	1,906,800
Reformer Feed	110,000	30.02	3,302,200
Raffinates	200,000	31.10	6,220,000
Jet Fuel	200,000	28.80	5,760,000
Total	615,000	.....	18,942,100

Attributed Feedstock—Class III Crude: 615,000 @ $.105 = $64,575 (estimated duties)

On the CF 7501, the refiner reports the following shipments and uses a prior manufacturing period's actual average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2)×(3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5)×(2)	7 Liq. duties (6)×(10) (9)
Week 1:						
Motor Gasoline	19,977	$35.28	$704,789	1.097219	21,919	$2,902
Total Alkylate	22,907	41.90	959,803	1.303104	29,850	3,134
Heavy Reformate	58,164	31.78	1,848,452	.988368	57,486	6,036
Reformer Feed	100,279	30.02	3,010,376	.933632	93,623	9,830
Raffinates	170,293	31.10	5,296,112	.967220	164,710	17,295
Jet Fuel	168,433	28.80	4,850,870	.895689	150,863	15,840
Total	540,053	.....	$16,670,402	.....	518,451 (9)	$54,437 (10)

Class III Crude Used 518,451 × $.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Used = $16,670,402 ÷ 518,451 = $32.154 (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 2:						
Motor Gasoline	20,651	$35.28	$728,567	1.096128	22,636	$2,377
Total Alkylate	23,435	41.90	981,926	1.301808	30,508	3,203
Heavy Reformate	59,819	31.78	1,901,048	.987386	59,064	6,202
Reformer Feed	101,167	30.02	3,037,033	.932704	94,359	9,908
Raffinates	172,317	31.10	5,359,059	.966259	166,503	17,483
Jet Fuel	165,291	28.80	4,760,381	.894799	147,903	15,529
Total	542,680		16,768,014		520,973	54,702

Class III Crude Used 520,973×$.105=$54,702
Volumetric Gain 21,707
Avg. Value/Barrel Crude Used=$32.186

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 3:						
Motor Gasoline	18,689	$35.28	$659,348	1.099168	20,542	$2,157
Total Alkylate	21,511	41.90	901,311	1.305418	28,081	2,948
Heavy Reformate	57,371	31.78	1,823,250	.990124	56,803	5,964
Reformer Feed	99,707	30.02	2,993,204	.935290	93,254	9,792
Raffinates	168,112	31.10	5,228,283	.968938	162,889	17,103
Jet Fuel	172,092	28.80	4,956,250	.897280	154,414	16,214
Total	537,482		16,561,646		515,983	54,178

Class III Crude Used 515,983×$.105=$54,178
Volumetric Gain 21,499
Avg. Value/Barrel Crude Used=$32.097

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 4:						
Motor Gasoline	21,905	$35.28	$772,808	1.097390	24,038	$2,524
Total Alkylate	22,552	41.90	944,929	1.303306	29,391	3,086
Heavy Reformate	58,116	31.78	1,846,926	.988522	57,447	6,032
Reformer Feed	101,058	30.02	3,033,761	.933777	94,365	9,908
Raffinates	169,823	31.10	5,281,495	.967371	164,281	17,250
Jet Fuel	171,493	28.80	4,938,998	.895829	153,627	16,131
Total	544,947		16,818,917		523,149	54,931

Class III Crude Used 523,149×$.105=$54,931
Volumetric Gain 21,798
Avg. Value/Barrel Crude Used=$32.149

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 5:						
Motor Gasoline	8,990	$35.28	$317,167	1.097698	9,868	$1,036
Total Alkylate	9,984	41.90	418,330	1.303671	13,016	1,367
Heavy Reformate	25,351	31.78	805,655	.988799	25,067	2,632
Reformer Feed	43,492	30.02	1,305,630	.934039	40,623	4,265
Raffinates	75,172	31.10	2,337,849	.967642	72,740	7,638
Jet Fuel	75,795	28.80	2,182,896	.896080	67,919	7,131
Total	238,784		7,367,527		229,233	24,069

Class III Crude Used 229,233×$.105=$24,069
Volumetric Gain 9,551
Avg. Value/Barrel Crude Used=$32.14

At the end of the month, the refiner must calculate its actual weighted average values for use in the subsequent period.

RECONCILIATION OF RELATIVE VALUE FOR THE SUBSEQUENT PERIOD

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2×3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5×2)	7 Liq. duties (6×(10) (9)
Month End:						
Motor Gasoline	90,212	$35.27	$3,181,777	1.095682	98,844	$10,379
Total Alkylate	100,389	41.84	4,200,276	1.299783	130,484	13,701
Heavy Reformate	258,821	30.66	7,935,452	.952470	246,519	25,885
Reformer Feed	445,703	30.54	13,611,770	.948742	422,857	44,400
Raffinates	755,717	29.69	22,437,238	.922336	697,025	73,188
Jet Fuel	753,104	30.42	22,909,424	.945014	711,694	74,726
Total	2,403,946	.....	74,275,937	.....	2,307,423 (9)	242,279 (10)

Class III Crude Used 2,307,423×$.105=$242,279
Volumetric Gain 96,523
Avg. Value/Barrel Crude Used=$74,275,937÷2,307,423=$32.19 (8)

Note: Actual monthly reconciliation data could result in attributions on a product basis that are less than or greater than weekly distributions. This is due to the ''weighing'' of the data i.e., motor gasoline on a weekly basis was $10,996 as compared to $10,379 as above. No additional duties are due to the averaging.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: April 5, 1995.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–10226 Filed 4–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH37

Time Limit for Filing a Claim for REPS Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the special allowance known as REPS (Restored Entitlement Program for Survivors). This amendment is necessary to conform the regulations to a decision of the United States Court of Appeals for the Federal Circuit which upheld a decision of the United States Court of Veterans Appeals invalidating the VA regulation establishing a time limit for filing a claim for REPS benefits. The purpose of the amendment is to remove the time limit.

EFFECTIVE DATE: This amendment is effective April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 amended title 42, United States Code, to terminate or reduce payment of the Social Security child's insurance benefit and to terminate the mother's benefit at the point at which the youngest child reached age 16. Previously, the mother's benefit had terminated when the youngest child reached age 18. Section 156 of Pub. L. 97–377, which established a program known as the Restored Entitlement Program for Survivors or REPS, in effect, restored such terminated or reduced benefits for surviving spouses and children of veterans who died on active duty prior to August 13, 1981, or died as a result of service-connected disability incurred or aggravated prior to that date.

Under the authority granted in section 156, VA issued regulations, codified at 38 CFR 3.812, which implemented the statute. Paragraph (f) of § 3.812 provided that benefits could be paid from the first day of the month during which the claimant first became eligible, if application was filed within 11 months following that month. This paragraph was amended on June 28, 1993, to require that the application be filed within 6 months of the month during which the claimant first became eligible in order for benefits to be payable from the first day of the month in which eligibility arose.

The United States Court of Veterans Appeals struck down subsections (2) and (3) of 38 CFR 3.812(f), which specified the time limits for filing an application for REPS benefits, in the case of *Cole* v. *Derwinski,* 2 Vet. App. 400 (1992), *aff'd,* 35 F.3d 551 (Fed. Cir. 1994), involving a claim for the REPS mother's benefit. The court relied on its *Cole* decision in *Skinner* v. *Brown,* 4 Vet. App. 141 (1993), *aff'd,* 27 F.3d 1571 (Fed. Cir. 1994), a case involving a claim for the REPS child's benefit.

In affirming the Court of Veterans Appeals decision, the United States Court of Appeals for the Federal Circuit held that the VA regulation denying retroactive payment to claimants who failed to file a REPS claim within 6 months of the month entitlement arose was contrary to the plain meaning of the REPS statute, which imposes no time restrictions on filing, and was therefore invalid. Paragraph (f) of 38 CFR 3.812 is therefore amended to show that there is no time limit for filing a claim for REPS benefits. The only restriction on payment to an otherwise eligible claimant is that no payment can be made for any period prior to January 1, 1983, the effective date set by the REPS statute.

This final rule constitutes an interpretive rule. Accordingly, it is made effective upon publication.

The Secretary of Veterans Affairs certifies that this final rule will not have

a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment will directly affect VA beneficiaries but will not directly affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no affected Catalog of Federal Domestic Assistance Program numbers.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: April 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.812 is amended by revising paragraph (f) and the authority citation following the paragraph to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97–377.

* * * * *

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a claim, benefits shall be payable for all periods of eligibility beginning on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983.

(Authority: Sec. 156, Pub. L. 97–377, 96 Stat. 1830, 1920 (1982))

[FR Doc. 95–10315 Filed 4–26–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI39–03–6674; FRL–5197–5]

Approval and Promulgation of Implementation Plan; Wisconsin; Correction

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Technical Amendment.

SUMMARY: This document contains corrections to a final rule which was published Monday, August 15, 1994 (59 FR 41711). The final rule approved volatile organic compound (VOC) regulations which were incorporated by reference into the Wisconsin State Implementation Plan (SIP).

EFFECTIVE DATE: This action is effective April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino at (312) 886–1767.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1994 (59 FR 41709), the United States Environmental Protection Agency (USEPA) approved a revision to the Wisconsin SIP which replaced the 154 series stationary source VOC regulations previously contained in Wisconsin's ozone SIP with 400 series regulations which are consistent with the Wisconsin Administrative Code. However, when these regulations were incorporated by reference into the Wisconsin SIP, USEPA failed to include the effective dates of the regulations.

Need for Correction

As published, it is unclear which version of the State's regulations are being incorporated by reference.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 31, 1995.

Valdas V. Adamkus,

Regional Administrator.

Correction of Publication

Accordingly, the publication on August 15, 1994, of the codification of the final regulations, which were the subject of FR Doc. 94–19842, is corrected by making the following technical amendments:

40 CFR Subpart YY—Wisconsin

Paragraph 52.2570(c)(73) is revised to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(73) Revisions to the ozone State Implementation Plan (SIP) were submitted by the Wisconsin Department of Natural Resources on September 22, 1993, and January 14, 1994. These rules replace the 154 series stationary source VOC regulations previously contained in Wisconsin's ozone SIP with 400 series regulations which are consistent with the current Wisconsin Administrative Code. These rules are only being approved as they apply to the ozone SIP.

(i) Incorporation by reference. The following chapters of the Wisconsin Administrative Code are incorporated by reference.

(A) Chapter NR 400: AIR POLLUTION CONTROL DEFINITIONS. NR 400.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 400.02 as published in the (Wisconsin) Register, June, 1993, No. 450, effective July 1, 1993.

(B) Chapter NR 419: CONTROL OF ORGANIC COMPOUND EMISSIONS, except for NR 419.07. NR 419.01, 419.02, 419.03, 419.04 and 419.06 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 419.05 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(C) Chapter NR 420: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM PETROLEUM AND GASOLINE SOURCES. NR 420.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March, 1, 1990. NR 420.02 and 420.045 as published in the (Wisconsin) Register, January, 1993, No. 445, effective February 1, 1993. NR 420.03 and 420.04 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 420.05 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992.

(D) Chapter NR 421: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM CHEMICAL, COATINGS AND RUBBER PRODUCTS MANUFACTURING. NR 421.01 as published in the (Wisconsin) Register, February, 1990, No. 410, Effective March 1, 1990. NR 421.02, 421.03, 421.05 and 421.06 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 421.04 as published in the (Wisconsin)

Register, May, 1992, No. 437, effective June 1, 1992.

(E) Chapter NR 422: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM SURFACE COATING, PRINTING AND ASPHALT SURFACING OPERATIONS. NR 422.01, 422.05, 422.06, 422.07, 422.08, 422.085, 422.09, 422.10, 422.11, 422.12, 422.13, 422.155 and 422.16 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 422.02, 422.03, 422.04, 422.14 and 422.15 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(F) Chapter NR 423: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM SOLVENT CLEANING OPERATIONS. NR 423.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 423.02 as published in the (Wisconsin) Register, January, 1987, No. 385, effective February 1, 1988. NR 423.03, 423.04, and 423.05 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(G) Chapter NR 424: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM PROCESS LINES. NR 424.01 and 424.03 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 424.02 as published in the (Wisconsin) Register, April, 1988, No. 388, effective May 1, 1988. NR 424.04 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(H) Chapter NR 425: COMPLIANCE SCHEDULES, EXCEPTIONS, REGISTRATION AND DEFERRALS FOR ORGANIC COMPOUND EMISSION SOURCES IN CHS. NR 419 TO 424. NR 425.01 and 425.02 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 425.03 425.04 and 425.05 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 425.035 as published in the (Wisconsin) Register, January, 1993, No. 445, effective February 1, 1993.

(I) Chapter NR 439: REPORTING, RECORDKEEPING, TESTING, INSPECTION AND DETERMINATION OF COMPLIANCE REQUIREMENTS. NR 439.01 and 439.085 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 439.02, 439.03, 439.04, 439.05, 439.055, 439.06, 439.07, 439.075, 439.09, 439.095 and 439.11 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 439.08 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 439.10 as published in the (Wisconsin) Register, September, 1987, No. 381, effective October 1, 1987.

(J) Chapter NR 484: INCORPORATION BY REFERENCE. NR 484.01 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 484.02 as published in the (Wisconsin) Register, September, 1986, No. 369, effective October 1, 1986. NR 484.03 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 484.04, 484.05 and 484.06 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 484.08 and 484.09 as published in the (Wisconsin) Register, October, 1992, No. 442, effective November 1, 1992.

[FR Doc. 95–10249 Filed 4–26–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MI34–05–6892, MI35–03–6893; FRL–5197–6]

Approval and Promulgation of Implementation Plan; Michigan, East Lansing and Genesee County NO_X Exemptions

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting exemptions to the East Lansing and Genesee County ozone nonattainment areas, both of which are classified as transitional, from applicable oxides of nitrogen (NO_X) requirements found in the Clean Air Act (Act). For transitional areas the NO_X requirements which apply are conformity, both general and transportation, and nonattainment new source review. Approval of these exemption requests would relieve these areas from adopting and implementing all of the aforementioned NO_X requirements. The State of Michigan submitted NO_X exemption requests for the East Lansing and Genesee County areas on July 1, 1994 and July 8, 1994, respectively. These requests are based on the fact that ozone monitoring in these areas indicate that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for exemptions from the NO_X requirements based on a demonstration that additional reductions of NO_X would not contribute to attainment of the ozone standard in these areas.

DATES: This final rule will be effective May 30, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the EPA's analysis are available for inspection at the following address: U.S. EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1994 and July 8, 1994 the State of Michigan submitted petitions to the EPA requesting that the East Lansing and Genesee County ozone nonattainment areas be exempted from the requirement to implement NO_X controls pursuant to section 182(f) of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in these areas during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On December 28, 1994, EPA published a rulemaking proposing approval of the NO_X exemption petitions. During the 30 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and also from a private party.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical support documents dated August 9, 1994 and March 10, 1995.

NRDC Comments

Following is a summary of comments received from the NRDC in a letter dated August 24, 1994. After each comment is EPA's response.

NRDC Comment 1

Certain commenters argued that NO_X exemptions are provided for in two

separate parts of the Act, 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 Act's conformity provisions.

EPA 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 Administrative Procedure Act (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 Act defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within 6 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).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [1] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'' this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the 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 Act sanctions, the States would have had to submit their requests for NO_X exemptions for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act 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 Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity 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 Administrative Procedures Act. 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.

NRDC Comment 2

Some commenters stated that the modeling required by EPA 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.

EPA Response

This comment is directed towards exemption approvals based on photochemical grid modeling. This comment does not apply in the case of East Lansing or Genesee County because this exemption request is based on monitoring.

NRDC Comment 3

Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one 3-year period with ''attainment.''

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the Act. The section 107 criteria are more comprehensive than the Act requires with respect to NO_X exemptions under section 182(f).

[1] Section 302(e) of the Act defines the term''person'' to include States.

[2] The final section 185B report was issued July 30, 1993.

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).

NRDC Comment 4

A waiver of NO_X controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separated downwind areas.

EPA Response

As a result of the comments, EPA reevaluated its position on this issue and has revised the previously issued guidance. See Memorandum, ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria'' dated February 8, 1995, for John Seitz's signature. As described in this memorandum, 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, the States have requested exemptions from NO_X requirements under section 182(f) for certain nonattainment areas in the modeling domain. Some of these areas 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 Guidelines for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), 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, § 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 § 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.

NRDC Comment 5

Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They 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, 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

[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 § 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.''

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.

EPA 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 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 exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions 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.

NRDC Comment 6

The Act does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA 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 that 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 Act provides that the new NO_X requirements shall not apply (or may by 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.

Private Citizen Comment 1

The Rose Lake [monitoring] site is in a very rural area surrounded by vegetation that would preclude any accurate readings from the site, plus it is an extensive distance from a highway with a significant volume of vehicles that would generate measurable ozone levels. I also note this site is in the wrong direction by at least 45 degrees to pick up any ozone levels from the East Lansing-Lansing urbanized area.

The 220 North Pennsylvania [monitoring] site is even more protected [than the Rose Lake monitoring site], being in the heart of a residential area, with a low volume highway adjacent. It

[4] 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] Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

is protected from the west and central part of the Lansing area, the prevailing wind source is from the west, and it is also located north of any industrial ozone that could be generated by several automotive plants.

EPA Response

As part of the State of Michigan's ozone monitoring networks, both the Rose Lake monitoring site and the 220 North Pennsylvania monitoring site have met the criteria established in the Code of Federal Regulations (CFR) for probe siting, as well as other EPA guidance at the time they were established. A follow-up review conducted on March 2, 1995 indicates they are still in compliance. These requirements can be found in 40 CFR part 58 Appendix E.

A review of wind speed and direction data for the summer months indicates that the Rose Lake monitor is within the area likely to be downwind of East Lansing. Furthermore, additional monitors in Genesee County are located in the area likely to see the maximum impact from the formation of ozone from emissions in the East Lansing area. In other words, the NO_X emissions from sources located in the East Lansing area will probably not generate ozone until they have reached the Genesee County area where there is an acceptable monitoring network.

Private Citizen Comment 2

Provisions of the Act and the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) should be jointly examined by EPA and the Federal Highway Administration (FHWA) to determine the effect of not exempting the East Lansing area as has been proposed. For example, could this exemption be granted if these monitors were placed in areas of high traffic volume?

EPA Response

The hypothetical question raised can only be answered if monitors were actually placed in areas of high traffic volume. Placing a monitor in an area of high traffic volume, where high NO_X concentrations could be expected, would most likely give erroneously low ozone readings because of the fact that high NO_X concentrations have the effect of ''scavenging'' ozone. Therefore, there is no reason to place a monitor in an area of high traffic volume. In addition to this, as has already been mentioned in the previous response, the State of Michigan already has an approved monitoring network for this area and establishing further monitors has not been demonstrated to be warranted.

When the EPA is presented with a NO_X exemption petition, it is faced with the task of approving or disapproving such a request solely on the Clean Air Act provisions and guidance which is developed under the Clean Air Act. ISTEA does not play a role in the decision making process for NO_X exemptions.

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_X exemption request. Therefore, EPA is granting the East Lansing and Genesee County areas section 182(f) NO_X exemptions based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

Both of these areas are classified as transitional. With a classification of transitional, an area which has not been granted a NO_X exemption would be subject to general conformity, transportation conformity, and nonattainment new source review NO_X requirements. Since these petitions for exemption are applicable areawide, as opposed to source-specific, in addition to exempting these areas from the nonattainment new source review requirements for NO_X, this action also exempts these areas from the NO_X conformity requirements of the Act (see G. T. Helms, January 12, 1995 ''Scope of Nitrogen Oxides (NO_X) Exemptions'' memorandum).

If, subsequent to the NO_X waiver being granted, EPA determines that either area has violated the standard, the section 182(f) exemption for that area, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. If an exemption is revoked, the State must thereafter comply with any applicable NO_X requirements set forth in the Act, such as those for NO_X NSR and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

This action will become effective on May 30, 1995.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

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 will relieve requirements otherwise imposed under

the Clean Air Act and, hence does not impose any 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.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 26, 1995. Filing a petition for reconsideration by the Administrator of this final 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 rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated; April 13, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (e) and (f) to read as follows:

§ 52.1174 Control strategy: Ozone

* * * * *

(e) Approval—On July 1, 1994, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the East Lansing ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity and new source review. Theses are required by sections 176(c) and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the East Lansing ozone nonattainment area, the exemption shall no longer apply.

(f) Approval—On July 8, 1994, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the Genesee County ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity and new source review. These are required by sections 176(c) and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the Genesee County ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 95–10247 Filed 4–26–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7615]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
North Dakota: Nelson County, unincorporated areas	380683	March 3, 1995	
Georgia: Worth County, unincorporated areas	130196	March 10, 1995	June 2, 1978.
Tennessee:			
Hancock County, unincorporated areas	470226	March 15, 1995	July 14, 1978.
Clay County, unincorporated areas	470382	March 17, 1995	March 30, 1979.
Arkansas: Hempstead County, unincorporated areas	050436	March 28, 1995	June 3, 1977.
New Eligibles—Regular Program			
Missouri:			
Dardenne Prairie, town of, St. Charles County	290899	March 13, 1995	December 15, 1992.
Park Hills, city of, St. Francois County [1]	290920	March 22, 1995	
Florida: Palm Shores, town of, Brevard County	120612	March 27, 1995	August 18, 1992.
Colorado: Severance, town of, Weld County [2]	080317	March 28, 1995	September 28, 1982.
Reinstatements			
Indiana: Lewisville, town of, Henry County	180091	October 26, 1976, Emerg.; September 4, 1987, Reg.; September 4, 1987, Susp.; March 10, 1995, Rein.	September 4, 1987.
Virginia: Quantico, town of, Prince William County	510232	March 19, 1975, Emerg.; August 15, 1978, Reg.; January 5, 1995; Susp.; March 29, 1995, Rein.	January 5, 1995.
Regular Program Conversions			
Region I:			
Connecticut:			
Darien, town of, Fairfield County	090005	March 2, 1995, suspension withdrawn.	March 2, 1995.
Ellington, town of, Tolland County	090158	.....do	Do.
Killingly, town of, Windham County	090136	.....do	Do.
New Britain, city of, Hartford County	090032	.....do	Do.
Suffield, town of, Hartford County	090038	.....do	Do.
Region VI:			
Louisiana:			
Grand Isle, city of, Jefferson Parish	225197	March 23, 1995, suspension withdrawn.	March 23, 1995.
Gretna, city of, Jefferson Parish	225198	.....do	Do.
Harahan, city of, Jefferson Parish	225200	.....do	Do.
Jean Lafitte, town of, Jefferson Parish	220371	.....do	Do.
Jefferson Parish, unincorporated areas	225199	.....do	Do.
Kenner, city of, Jefferson Parish	225201	.....do	Do.
Westwego, city of, Jefferson Parish	220094	.....do	Do.

[1] Effective January 1, 1994, the Cities of Flat River (CID 295264), Esther (CID 290730), and Elvins (CID 290322) and the Village of Rivermines (CID 290544) consolidated into one governmental jurisdiction (city) named the ''City of Park Hills.'' The City of Park Hills has adopted the Flood Insurance Study for the City of Flat River with accompanying Flood Insurance Rate Map (FIRM) dated 4–20–73 and revision dated 9–5–75, and has also adopted the Flood Hazard Boundary Maps (FHBMs) for the Cities of Elvins and Esther dated 8–1–87 and 2–21–75, respectively, for flood insurance and floodplain management purposes.

[2] The Town of Severance has adopted the Weld County (CID 080266) Flood Insurance Rate Map, Panel Number 080266 0475 C, dated September 28, 1982.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: April 20, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–10352 Filed 4–26–95; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 84–060]

RIN 2115–AB67

Licensing of Pilots; Manning of Vessels by Pilots

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of pilots and the manning of vessels by pilots. This final rule: defines ''coastwise seagoing vessel'' for pilotage purposes; describes first class pilotage areas where local pilotage expertise is warranted; allows licensed individuals to serve as pilots in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control; requires a Federal pilot for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line; and provides quick reference tables for Federal pilotage requirements. These changes are necessary to eliminate confusion over where and on what vessels pilotage expertise is required.

EFFECTIVE DATE: May 30, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council(G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Bennett, Merchant Vessel Personnel Division (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593–0001, telephone (202) 267–6102.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are: Mr. John R. Bennett, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, and, Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

A notice of proposed rulemaking (NPRM) was published June 24, 1985 (50 FR 26117), addressing unresolved pilotage issues. The comment period was originally scheduled to end on September 23, 1985, however, a notice of extension of comment period (50 FR 38557), published in the **Federal Register** on September 23, 1985, extended the comment period to December 22, 1985. In response to that notice, the Coast Guard received 172 written comments, and held two public meetings. One public meeting was held in New York, hosted by the Maritime Association of New York, on November 12, 1985. The second was a meeting of the Towing Safety Advisory Committee Subcommittee on Personnel Manning and Licensing, which was held at Coast Guard Headquarters in Washington, D.C., on December 12, 1985. On June 6, 1988, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) (53 FR 20654) addressing the comments received in response to the NPRM and public meetings. The comment period for the SNPRM ended September 6, 1988. Sixteen written comments were received regarding the 1988 SNPRM. Those comments included several recommendations by the Towing Safety Advisory Committee (TSAC).

On February 2, 1994, the Coast Guard published an interim final rule entitled Licensing of Pilots; Manning of Vessels by Pilots in the **Federal Register** (59 FR 4839). The Coast Guard received six letters commenting on the interim final rule. No public hearing was requested, and none was held.

Background and Purpose

Normally, foreign vessels and U.S. vessels operating on a registry endorsement are under State pilotage authority, and U.S. vessels operating on a coastwise endorsement are under Federal pilotage authority. The regulations addressed in this rule deal only with Federal pilotage.

Discussion of Comments and Changes

Six letters commenting on the interim final rule were received. Some of the comments addressed in these letters raised issues that were not the subject of this rulemaking. The Coast Guard is responding only to those comments relating to this rulemaking.

One comment suggested that there should be only ''designated'' pilotage areas because otherwise the Coast Guard would be reducing pilotage requirements for tank barges. The Coast Guard is not reducing pilotage requirements for tank barges or any other vessels in this rulemaking.

Another comment stated that ''the local pilotage rules are excessive with regard to the round trip required in non-designated areas.'' This rule places a Federal pilotage requirement on inland route self-propelled vessels greater than 1,600 gross tons. The only other change required by this rule is to require the master, mate or operator of a coastwise seagoing vessel to have made one round trip in the non-designated areas of pilotage waters within the past five years in order to satisfy the pilotage requirement for that area. The Coast Guard does not believe these additional pilotage requirements are excessive.

Several members of the small passenger vessel industry indicated that they are opposed to the rule because it places a new pilotage requirement on their vessels. The interim final rule does not establish a new pilotage requirement for small passenger vessels. Existing pilotage regulatory requirements for these vessels were established in the 1985 Final Rule (50 FR 26106) and in earlier rules. A vessel has a Federal pilotage requirement if it is a coastwise seagoing vessel, not sailing on register, and underway, not on the high seas. This rule does not create a pilotage requirement for certain small passenger vessels, the requirement already exists.

Another comment stated that while it is clear in the quick reference table that a coastwise seagoing tank barge requires a pilot, the text of the regulation does not specifically indicate that it is a ''coastwise seagoing'' tank barge that requires a pilot, and suggested that the text of the regulation be modified to agree with the quick reference table. The Coast Guard agrees, and the words ''coastwise seagoing'' are being added to the text of the regulation in § 15.812(a)(1).

The same comment also suggested that the ''designated'' areas be compiled and published in the Code of Federal Regulations. The Coast Guard does not agree. This information can be readily obtained from the local Coast Guard Captain of the Port (COTP).

The Coast Guard is adopting the interim final rule as published with some minor technical changes. First, the

Coast Guard is defining the term ''pilotage waters'' in the definition section as opposed to a footnote in the reference tables.

Second, the **Federal Register** inadvertently omitted five asterisks in the amendatory language in the interim final rule. As a result, paragraphs (f) and (g) from 46 CFR 15.812 were deleted in error. This clerical error has been corrected in the final rule. Third, the Coast Guard is revising the headings to the quick reference tables to clarify that designated and non-designated areas are pilotage waters. Lastly, the Coast Guard has inserted the words ''coastwise seagoing'' in 15.812(a)(1) before the term ''tank barges'' to clarify that the rule applies only to coastwise seagoing tank barges.

Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). This rule is significant because it clarifies when a vessel is required to use the services of a Federally licensed pilot, and at one time was controversial.

The Coast Guard expects the economic impact of this rule to be minimal. This rule defines ''coastwise seagoing vessel'' for pilotage purposes, describes first class pilotage areas where local pilotage expertise is warranted, and provides quick reference tables for pilotage requirements. Additionally, this rule clarifies that a Federal pilot is required for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line.

This rule codifies current practices, and there are no expected increases in costs. Therefore, no additional assessment is necessary. The Coast Guard anticipates that the rule will not increase crew size or require increased use of pilots since, for the most part, vessels affected by this rule are presently required by their Certificate of Inspection to use a Federal pilot.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The small entities that could be affected by this final rule are primarily independent operators of tank barges and self-propelled vessels. Since this rule, for the most part, adopts current practices, the Coast Guard believes that there will be no significant economic impact on ''small entities.'' Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule under 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 does not affect existing State pilotage requirements, but instead clarifies the Federal pilotage requirements for those vessels which, under 46 U.S.C. 8502, are exclusively subject to Federal pilotage.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule, which clarifies Federal pilotage requirements, is administrative in nature since, by codifying existing practices, it permits vessels to continue to operate according to current industry practice. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1, ''Administrative actions or procedural regulations and policies which clearly do not have any environmental impact.'' A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard is adopting the interim final rule published at 59 FR 4839 on February 22, 1994, as final with the following changes:

PART 15—MANNING REQUIREMENTS

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

Authority: 46 U.S.C. 2103, 3703, 8101, 8502, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198, and 49 CFR 1.46.

1a. In § 15.301(a), the definition for designated areas is revised and a definition for pilotage waters is added in alphabetical order to read as follows:

§ 15.301 Definition of terms used in this part.

* * * * *

Designated areas means those areas within pilotage waters for which first class pilot's licenses or endorsements are issued under part 10, subpart G, of this Chapter, by the Officer in Charge, Marine Inspection (OCMI). The areas for which first class pilot's licenses or endorsements are issued within a particular Marine Inspection Zone and the specific requirements to obtain them may be obtained from the OCMI concerned.

* * * * *

Pilotage waters means the navigable waters of the United States, including all inland waters and offshore waters to a distance of three nautical miles from the baseline from which the Territorial Sea is measured.

* * * * *

2. Section 15.812(a)(1) is revised to read as follows:

§ 15.812 Pilots.

(a) * * *

(1) Coastwise seagoing vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and coastwise seagoing tank barges subject to inspection under 46 U.S.C. Chapter 37;

* * * * *

3. Section 15.812(e) is revised to read as follows:

§ 15.812 Plots.

(e) Federal pilotage requirements contained in paragraphs (a) through (d) of this section are summarized in two quick reference tables.

(1) Table 15.812(e)(1) provides a guide to the pilotage requirements for inspected, self-propelled vessels.

TABLE 15.812(e)(1).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED SELF-PROPELLED VESSELS, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First Class Pilot's licenses are issued)	Nondesignated areas of pilotage waters (between the three mile line and the start of traditional pilotage routes)
Inspected self-propelled vessels greater than 1,600 GT, authorized by their Certificate of Inspection (COI) to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GT, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot, *or* Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Maintains current knowledge of the waters to be navigated.[1] 3. Has 4 round trips over the route.[2]	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels greater than 1,600 GT, not authorized by their COI to proceed beyond the Boundary Line (Inland route vessels); other than vessels operating on the Great Lakes.	First Class Pilot	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GT, not authorized by their COI to proceed beyond the Boundary Line (Inland route vessels); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] One round trip within the past 60 months.
[2] If the route is to be traversed during darkness, 1 of the 4 round trips must be made during darkness.

(2) Table 15.812(e)(2) provides a guide to the pilotage requirements for tank barges.

TABLE 15.812(e)(2).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED TANK BARGES, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First Class Pilot's licenses are issued)	Nondesignated areas of pilotage waters (between the three mile line and the start of traditional pilotage routes)
Tank Barges greater than 10,000 GT, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot	Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam.[1] 3. Maintains current knowledge of the waters to be navigated.[2] 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing.
Tank Barges 10,000 GT or less, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot, *or* Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old 2. Has an annual physical exam.[1] 3. Maintains current knowledge of the waters to be navigated.[2] 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations. 5. Has 12 round trips over the route.[3]	Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam.[1] 3. Maintains current knowledge of the waters to be navigated.[2] 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations.
Tank Barges authorized by their Certificate of Inspection for Inland routes only (Lakes, Bays, and Sounds/Rivers); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] Annual physical exam does not apply to an individual who will serve as a pilot of a Tank Barge of less than 1,600 gross tons.
[2] One round trip within the past 60 months.
[3] If the route is to be traversed during darkness, 3 of the 12 round trips must be made during darkness.

4. Section 15.812(f) is added to read as follows:

(f) In Prince William Sound, Alaska, coastwise seagoing vessels over 1,600 gross tons and propelled by machinery and subject to inspection under 46 U.S.C. Chapter 37 must:

(1) When operating from 60°49′ North latitude to the Port of Valdez be under the direction and control of a federally licensed pilot who:

(i) Is operating under the Federal license;

(ii) Holds a license issued by the State of Alaska; and

(iii) Is not a member of the crew of the vessel.

(2) Navigate with either two licensed deck officers on the bridge or a federally licensed pilot when operating South of 60°49′ North latitude and in the approaches through Hinchinbrook Entrance and in the area bounded:

(i) On the West by a line one mile west of the western boundary of the Traffic Separation Scheme;

(ii) On the East by 146°00′ West longitude;

(iii) On the North by 60°49′ North latitude; and

(iv) On the South by that area of Hinchinbrook Entrance within the territorial sea bounded by 60° 07′ North latitude and 146°31.5′ West longitude.

Dated: March 17, 1995.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 95–10231 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–14–P

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–94–3, Notice No. 1]

Policy on the Safety of Railroad Bridges

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim statement of policy.

SUMMARY: FRA issues an interim statement of policy for the safety of railroad bridges. FRA establishes suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. FRA will subsequently make the interim statement of policy part of the final rule amending 49 CFR part 213 (See 57 FR 54038, November 16, 1992). This final rule will reflect any changes that appear necessary following public comment on the interim statement of policy.

DATES: *Effective Date:* The interim statement of policy is effective May 30, 1995. Written comments must be received no later than June 26, 1995. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: Written comments on this policy should be submitted to the Docket Clerk (RCC–30), Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date the comments were received and return the postcard to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (Telephone: 202–366–0507), or Nancy Lummen Lewis, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (Telephone 202–366–0635).

SUPPLEMENTARY INFORMATION: Beginning in 1991, FRA conducted a review of the safety of railroad bridges. The review was prompted by the agency's perception that the bridge population was aging, traffic density and loads were increasing on many routes, and the consequences of a bridge failure could be catastrophic.

I. Bridge Safety Survey

FRA counted the approximate number of bridges that carry railroad track in the United States, and then surveyed the safety of those bridges. The count revealed that

a. Approximately 100,700 bridges carried railroad tracks in 1991,

b. Approximately 10 bridges exist for every 14 miles of railroad, and

c. Approximately 120 feet of track per mile is located on a bridge.

The safety survey accomplished several objectives. It determined whether the condition of railroad bridges posed a significant hazard to the safety of the public. It documented the methods used by the railroad industry for the inspection, management and assurance of safety of those bridges. It provided information with which FRA could evaluate the need for federal action to improve the safety of railroad bridges.

The survey assessed the policies and practices used by 80 railroads to ensure the integrity of their bridges. The railroads surveyed included 21 major railroads (including 14 class I railroads and seven major passenger or commuter railroads), 20 class II regional railroads, and 39 class III shortline railroads. The 21 class I and passenger railroads are termed ''major railroads'' because they own most of the railroad bridges and handle the majority of freight and passenger traffic. In the course of the survey, FRA inspectors observed railroad inspections of more than 8,000 bridges.

The survey showed that all of the 21 major railroads have conducted comprehensive, effective bridge inspection programs for several decades. The survey demonstrated that these railroads are acting to safeguard the integrity of their bridges. The railroad managers know the condition of their bridges, and they are taking appropriate action to prevent structural failure. The findings for the 20 regional railroads were similar to those of the major railroads.

The survey showed the major and regional railroads use a variety of methods to inspect and manage their bridges. The degree to which inspectors are supervised, the levels at which certain decisions are made, and the methods used to record and report inspections vary considerably among railroads. Nevertheless, these programs share certain basic principles that characterize effective bridge management practices.

The consistency of findings among the Class I and II railroads, passenger operators, and many smaller railroads indicates that railroads are following a course of action that corresponds with the public interest in prevention of bridge failures. The railroads' actions are driven by a need to prevent the significant economic harm that result from the loss of a valuable bridge and the cost of associated casualties.

On shortline railroads, however, FRA found considerable variation in the quality of bridge management programs and bridge conditions. Many shortlines have exemplary programs, well-suited to their size and the nature of their structures and traffic. A few, however, did not address all of their responsibilities for the safety of their bridges.

These smaller railroads with minimal bridge management programs typically move low levels of traffic over a small number of bridges. Nevertheless, the consequences of a bridge failure on one of these railroads could be as severe as a failure occurring anywhere. The risk of human casualty or environmental damage would be the same for each, and the cost of the failure could be ruinous to a railroad with limited resources. This finding indicates a situation that FRA must address.

II. The Safety Record of Railroad Bridges

During the past five decades, not one fatality has been caused by the structural failure of a railroad bridge. Train accidents caused by the structural failure of railroad bridges have been extremely rare.

Although the average construction date of railroad bridges predates most highway bridges by several decades, the older railroad bridges were designed to carry heavy steam locomotives. Design factors were generally conservative, and the bridges' functional designs permit repairs and reinforcements when necessary to maintain their viability.

Railroad bridges are most often privately, rather than publicly, owned. Their owners seem to recognize the economic consequences of neglecting important maintenance. Private ownership enables the railroads to control the loads that operate over their bridges. Cars and locomotives exceeding the nominal capacity of a bridge are not operated without permission from the responsible bridge engineers, and then only under restrictions and conditions that protect the integrity of the bridge.

Many railroad bridges display superficial signs of deterioration but still retain the capacity to safely carry their loads. Corrosion on a bridge is not a safety issue unless a critical area sees significant loss of material. Routine inspections are prescribed to detect this condition, but determination of its effect requires a detailed inspection and analysis of the bridge. In general, timber bridges continue to function safely, and masonry structures built as early as the 1830's remain functional and safe for their traffic.

Of the few train accidents that involved bridges, most have not been caused by structural failure. FRA accident records for 1982 through 1993 show 15 train accidents that were caused by bridge structural failures, including three that involved improper repair procedures. These accidents caused no reportable injuries and a reported $856,046 damage to railroad facilities, cars and locomotives.

During the same period, 29 train accidents on or near bridges were caused by track conditions on the bridge or its approaches. These accidents caused no reportable injuries, and a reported $4,596,733 damage to railroad facilities, cars and locomotives.

The same time period saw 19 train accidents on bridges caused by external damage to the bridge, including three fires, 11 floods or washouts, four bridges struck by motor vehicles, and one bridge struck by a marine vessel. The accident at Mobile, Alabama on September 22, 1993 alone caused 47 fatalities, 102 non-fatal injuries, and over $10,000,000 in property damage. The losses from these 19 accidents totaled 47 fatalities, 124 non-fatal injuries, and $22,150,865 damage to railroad facilities, cars and locomotives.

IV. Bridge Safety Policy

The severity of a train accident is usually compounded when a bridge is involved, regardless of the cause of the accident. FRA must retain its capability to deal effectively with any safety problems involving the structural integrity of railroad bridges. At the same time, FRA must assure that private and public resources are not diverted unnecessarily from other programs that are also critical to railroad safety.

At one extreme, FRA could respond to bridge issues only when accidents occur or when someone contacts the agency about particular concerns. However, such a reactive policy would inhibit FRA's ability to detect impending problems with railroad bridges. At the other extreme, FRA could regulate all aspects of railroad bridge management, including inspection, rating, construction and maintenance. The expense to the railroad industry of such a policy is not justified by the findings of the safety survey.

Because the industry has no apparent systemic bridge safety problem, FRA chooses to adopt a policy, rather than issue regulations, to carry out its responsibility of protecting bridge safety. The policy includes non-regulatory guidelines to inform railroad managers and all concerned about current good practices related to bridge inspection and management. The guidelines accommodate a wide variety of effective bridge inspection and management methods.

Even without specific bridge safety regulations, FRA maintains authority under 49 U.S.C. 20101 *et seq.* (formerly the Federal Railroad Safety Act of 1970) to inspect any railroad facility that affects safety and, if necessary, to remove it from service. The guidelines represent the general criteria against which FRA will evaluate each railroad's bridge inspection and management program.

FRA does not expect that its policy will unnecessarily divert resources away from the functional work of bridge management by forcing railroads to change effective bridge management programs. Likewise, the policy should not require FRA to divert public resources to employ a large staff of bridge specialists.

FRA will revise the guidelines as necessary to accomplish the objectives of the bridge safety program. To that end, FRA will continue to monitor and evaluate the railroads' bridge inspection and management programs to guarantee that those responsible for the safety of bridges continue to meet their responsibilities. FRA will make its findings available to the public upon request, excluding any proprietary information received and identified as such. Should FRA find through its monitoring that widespread bridge structural problems have developed, it may use the information it has gathered to commence a rulemaking proceeding.

Effect of This Interim Statement of Policy

The purpose of this notice is to issue an interim statement of policy containing guidelines for the proper maintenance of bridge structures. It is meant to be advisory in nature; it does not have the force of regulations under which FRA ordinarily issues violations and assesses civil penalties.

However, FRA maintains emergency authority to issue emergency, compliance, and disqualification orders, as well as authority to seek injunctive relief in federal district court, under 49 U.S.C. 20104 (formerly known as the Federal Rail Safety Act of 1970) and 49 CFR part 209. FRA will exercise this authority when an unsafe condition or improper maintenance of a railroad bridge creates an imminent hazard of death or injury to persons. Furthermore, should FRA, in the future, find the need to address bridge integrity in a regulatory proceeding, it will do so.

Following the comment period, FRA will issue any necessary changes to the interim statement of policy. The notice of changes will appear simultaneously with the Notice of Final Rule for the proceeding amending the track safety standards in 49 CFR part 213, begun in November, 1992. (See 57 FR 54038, November 16, 1992.) Except as modified in response to the comments, this interim statement of policy will become a final statement of policy at that time.

Public Participation

Because the interim statement of policy is advisory in nature, notice and public participation are not required. However, the public is invited to submit comments within 30 days following its publication.

FRA would appreciate comments about its plan to issue a statement of policy rather than regulations governing railroad bridge maintenance. FRA would also welcome comments about the value of permanently placing the

statement of policy in a new appendix to 49 CFR part 213. Finally, FRA would like comments about the guidelines themselves and their value as criteria in deciding whether stronger enforcement action on particular railroad bridges is warranted.

Comments received after the 30-day deadline will be considered if it is possible to do so without incurring additional delay or expense.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies

This interim statement of policy has been evaluated in accordance with existing regulatory policies. The regulatory document is considered to be a nonsignificant regulatory action under E.O. 12866 and is a nonsignificant rule under section 5(a)(4) of DOT Regulatory Policies and Procedures (44 FR. 11034, February 26, 1979) because it is advisory only and does not carry with it the force of law or regulation. For nonsignificant rules, the DOT Regulatory Policies and Procedures ordinarily require an economic evaluation to be placed in the public docket. This evaluation should include an analysis of the economic consequences of the rule, including (if possible) an estimation of the cost and benefits of the rule to the private sector, consumers, and all levels of government. However, such an evaluation is not required if the expected impact of a rule is deemed minimal. Because this interim statement of policy offers only guidelines to be followed and does not mandate any actions or establish any recordkeeping requirements, the need for a regulatory evaluation is not indicated.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of this interim statement of policy, FRA concluded that it will not have any measurable impact on small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a very substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no information collection requirements contained in this interim statement of policy.

Environmental Impact

FRA has evaluated this interim statement of policy in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

Implementation of this interim statement of policy could result in a judicial determination that it constitutes FRA's occupation of the field of railroad bridge safety regulation. Under 49 U.S.C. 20106, a state may enforce its own statute or regulation related to railroad safety until the Secretary of Transportation issues an order or regulation ''covering the subject matter'' of the state's law. A state may adopt or enforce a more stringent law relevant to the subject matter as long as it ''(1) is necessary to eliminate or reduce a local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonably burden interstate commerce.''

At this time, FRA is aware of only one state that could be affected by a court's determination that the Secretary of Transportation, through FRA, has covered the subject matter of railroad bridge safety by issuing this policy statement. FRA has prepared a Federalism Assessment, pursuant to Executive Order 12612 and placed it in the docket reserved for this proceeding, to address the federalism implications this interim policy could have on that state or any other state seeking to regulate railroad bridge safety.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Railroads.

Therefore, in consideration of the foregoing, the Federal Railroad Administration issues the following:

Interim Statement of Agency Policy on the Structural Integrity of Railroad Bridges

The structural integrity of bridges that carry railroad tracks is important to the safety of railroad employees and that the public. The responsibility for the safety of railroad bridges rests with the owner of the track carried by the bridge, together with any other party to whom that responsibility has been assigned by the track owner.

The capacity of a bridge to safely support its traffic can only be determined by intelligent application of engineering principles and the laws of physics. Bridge owners should use, as FRA will, those principles to assess the integrity of railroad bridges.

The long term ability of a structure to perform its function is an economic issue beyond the intent of this policy. In assessing a bridge's structural condition, FRA will focus on the present safety of the structure, rather than its appearance or long term usefulness.

FRA inspectors will conduct regular evaluations of railroad bridge inspection and management practices. The objective of these evaluations will be to document the practices of the evaluated railroad and to disclose any program weaknesses that could affect the safety of the public. Should problems be disclosed, FRA will seek a cooperative resolution. If public safety is jeopardized by failure to resolve a problem, or by the incompetence or dishonorable intentions of any bridge owner, FRA will use available legal means, including issuance of emergency orders, to protect the safety of railroad employees and the public.

This policy statement addresses the integrity of bridges that carry railroad tracks. It does not address the integrity of other types of structures on railroad property, *i.e.*, tunnels, or bridges carrying highways or other features over railroads, except to the extent that position and condition of these structures affects the safe passage of trains. Likewise, this policy statement extends its reach beyond the narrow issue of bridges carrying railroad tracks only where it is necessary to do so for the protection of highway users, pedestrians and others lawfully occupying the space under a railroad bridge.

The guidelines published in this statement are advisory, rather than regulatory, in nature. They indicate those elements FRA deems essential to successful bridge management programs. FRA will use the guidelines when evaluating bridge inspection and management practices.

Guidelines

1. *Responsibility for safety of bridges.*

(a) *Track owner.* The owner of the track carried by a bridge is responsible for ensuring that the bridge will safely support the trains which operate over it and the loads imposed upon it.

(b) *Operating railroad.* The operating railroad that authorizes train movements over a bridge should take whatever steps are necessary to verify that the maintenance responsibility for the bridge is being fulfilled so as to safeguard trains operated under its authority.

(c) *Assignment of responsibility.* The owner of the track carried by a bridge may assign responsibility for maintenance of the bridge to another party as long as the assignment ensures that responsibility for the safety of the bridge is not diminished.

2. *Capacity of bridges.*

(a) *Determination.* The safe capacity of bridges should be determined by competent engineers using accepted principles of structural design and analysis.

(b) *Analysis.* Proper analysis of a bridge requires knowledge of the actual dimensions, materials and properties of the structural members of the bridge, their condition, and the stresses imposed in those members by the service loads.

(c) *Rating.* The factors which were used for the design of a bridge can generally be used to determine and rate the load capacity of a bridge provided:

(i) The condition of the bridge has not changed significantly, and

(ii) The stresses resulting from the service loads can be correlated to the stresses for which the bridge was designed or rated.

3. *Bridge loads.*

(a) *Control of loads.* The operating instructions for each railroad operating over bridges should include provisions to restrict the movement of cars and locomotives whose weight or configuration exceed the nominal capacity of the bridges.

(b) *Authority for exceptions.* Equipment exceeding the nominal weight restriction on a bridge should be operated only under conditions determined by a competent engineer who has properly analyzed the stresses resulting from the proposed loads.

(c) *Operating conditions.* Operating conditions for exceptional loads may include speed restrictions, restriction of traffic from adjacent multiple tracks, and weight limitations on adjacent cars in the same train.

4. *Bridge records.*

(a) The organization responsible for the safety of a bridge should keep design, construction, maintenance and repair records readily accessible to permit the determination of safe loads. Having design or rating drawings and calculations that conform to the actual structure greatly simplifies the process of making accurate determinations of safe bridge loads.

(b) Organizations acquiring railroad property should obtain original or usable copies of all bridge records and drawings, and protect or maintain knowledge of the location of the original records.

5. *Specifications for design and rating.*

(a) The recommended specifications for the design and rating of bridges are those found in the ''Manual for Railway Engineering'' published by the American Railway Engineering Association (AREA). These specifications incorporate recognized principles of structural design and analysis. They are continually reviewed and revised by committees of competent engineers. Other specifications for design and rating, however, have been successfully used by some railroads and may also be suitable now.

(b) A bridge can be rated for capacity according to current specifications regardless of the specification to which it was originally designed.

6. *Periodic inspections.*

(a) Periodic bridge inspections by competent inspectors are necessary to determine whether a structure conforms to its design or rating condition and, if not, or the degree of nonconformity.

(b) The prevailing practice throughout the railroad industry is to inspect railroad bridges at least annually. Inspections at more frequent intervals may be indicated by the nature or condition of a structure or intensive traffic levels.

7. *Underwater inspections.*

(a) Inspections of bridges should include measuring and recording the condition of substructure support at locations subject to erosion from moving water.

(b) Stream beds are often not visible to the inspector. Indirect measurements by sounding, probing, or any other appropriate means are necessary in those cases. A series of records of those readings will provide the best information should unexpected changes suddenly occur. Where such indirect measurements do not provide the necessary assurance of foundation integrity, diving inspections should be performed as prescribed by a competent engineer.

8. *Special inspections.*

(a) A special bridge inspection should be performed after an occurrence that might have reduced the capacity of the bridge, such as a flood, a derailment, or an unusual impact.

(b) When a railroad learns that a bridge might have suffered damage through an unusual occurrence, it should restrict train operation over the bridge until the bridge can be inspected and evaluated.

9. *Inspection records.*

(a) Bridge inspections should be recorded. Records should identify the structure inspected, the date of the inspection, the name of the inspector, the components inspected, and their condition.

(b) Information from bridge inspection reports should be incorporated into a bridge management program to ensure that exceptions on the reports are corrected or accounted for. A series of inspection reports over time should be maintained so as to provide a valuable record of trends and rates of degradation of bridge components. The reports should be structured to promote comprehensive inspections and effective communication between an inspector and an engineer who performs an analysis of a bridge.

(c) An inspection report should be comprehensible to a competent person without interpretation by the reporting inspector.

10. *Bridge inspectors and engineers.*

(a) Bridge inspections should be performed by technicians whose training and experience enable them to detect and record indications of distress on a bridge. Inspectors must provide accurate measurements and other information about the condition of the bridge in enough detail for an engineer to make a proper evaluation of the safety of the bridge.

(b) Accurate information about the condition of a bridge should be evaluated by an engineer who is competent to determine the capacity of the bridge. The inspector and the evaluator are often not the same individual. The quality of the bridge evaluation depends on the quality of the communication between them.

11. *Scheduling inspections.*

(a) A bridge management program should include a means to ensure that each bridge under the program is inspected at the frequency prescribed for that bridge by a competent engineer.

(b) Bridge inspections should be scheduled from an accurate bridge inventory list that includes the due date of the next inspection.

12. *Special considerations for railroad bridges.*

Railroad bridges differ from other types of bridges in the types of loads they carry, in their modes of failure and indications of distress, and in their construction details and components. Proper inspection and analysis of railroad bridges requires familiarity with the loads, details and indications of distress that are unique to this class of structure.

Issued at Washington, DC., on April 21, 1995.

Jolene M. Molitoris,

Administrator.

[FR Doc. 95–10323 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 042195A]

Groundfish of the Gulf of Alaska; Trawl Fishery for Deep-water Species

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 22, 1995, until 12 noon, A.l.t., July 1, 1995.

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

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

In accordance with § 672.20(f)(1)(i) the deep-water species fishery, which is defined at § 672.20(f)(1)(i)(B)(*2*) was apportioned 300 metric tons of Pacific halibut prohibited species catch for the second season, the period April 1, 1995, through June 30, 1995 (60 FR 8470, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the second seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

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

Classification

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

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

Dated: April 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–10299 Filed 4–24–95; 9:16 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 042195C]

Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Pacific Cod Fishery

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 1995 prohibited species bycatch mortality allowance of Pacific halibut specified for the trawl Pacific cod fishery in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 24, 1995, until 12 noon, A.l.t., October 25, 1995.

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

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

The first seasonal bycatch mortality allowance of Pacific halibut for the BSAI trawl Pacific cod fishery, which is defined at § 675.21(b)(1)(iii)(E), was established as 1,450 metric tons by the final 1995 specifications of groundfish (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal apportionment of the Pacific halibut bycatch mortality allowance for the trawl Pacific cod fishery has been caught. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

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

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

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

Dated: April 21, 1995.

Richard W. Surdi,

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

[FR Doc. 95–10298 Filed 4–24–95; 9:16 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 81
Thursday, April 27, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–30–AD]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This proposal would require an inspection to detect evidence of sealant around the lug bushing flanges of certain actuator attach pin assemblies of the main landing gear (MLG), and replacement of the pin assembly with a serviceable unit if no sealant is present. This proposal is prompted by reports of cracks emanating from corrosion pits of the lug bores on the actuator attach pin assemblies of two MLG's. The actions specified by the proposed AD are intended to prevent failure of the actuator attach pins as a result of corrosion and subsequent cracking of the lug bores. Such failure could result in the MLG failing to extend completely or rapidly free-falling during extension and causing additional damage to the landing gear.

DATES: Comments must be received by May 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–30–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received reports indicating that cracked lugs were found on the actuator attach pin assemblies of two main landing gears (MLG) installed on Lockheed Model L–1011–385 series airplanes. The actuator attach pins connect the piston end of the retract actuator of the MLG to the gear strut. Results of an examination of one pin assembly revealed that cracks emanated from corrosion pits beneath the bushing surface on the lug bores. The corrosion may have been caused by the intrusion of moisture between the lug surface and the bushing flange. The lug bores on the pin assemblies lacked a proper protective finish. In addition, the bushings were sealed insufficiently to prevent the intrusion of moisture and resultant corrosion. Corrosion and subsequent cracking of the lug bores, if not corrected, could result in failure of the attach pins. This condition, if not corrected, could result in the MLG failing to extend completely or rapidly free-falling during extension and causing additional damage to the landing gear.

The FAA has reviewed and approved Lockheed Service Bulletin 093–32–256, dated November 11, 1994, which describes procedures for a one-time inspection to detect evidence of sealant around the lug bushing flanges of certain actuator attach pin assemblies of the MLG. If sealant is not present, the service bulletin recommends replacement of the pin assembly with a serviceable unit.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection to detect evidence of sealant around the lug bushing flanges of certain actuator attach pin assemblies of the MLG and, if no sealant is present, replacement of the pin assembly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, although the service bulletin recommends that the inspection be performed within 6 months, the FAA is proposing a compliance time of 90 days for accomplishment of the inspection. In developing this proposed compliance

time, the FAA considered the safety implications, availability of required replacement parts, and normal maintenance schedules for timely accomplishment of the proposed actions. The FAA has determined that accomplishment of the proposed inspection requires no special access. Further, the proposed inspection requires only one work hour to perform, which is sufficiently short to easily allow the inspection to be accomplished outside normal maintenance facilities. In consideration of these factors, the FAA has determined that a compliance time of 90 days represents an appropriate interval in which the inspection of the pin assemblies can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 236 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,020, or $60 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed Aeronautical Systems Company: Docket 95–NM–30–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the actuator attach pins as a result of corrosion and subsequent cracking of the lug bores, which could result in the main landing gear (MLG) failing to extend completely or rapidly free-falling during extension and causing additional damage to the landing gear, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to detect evidence of sealant around the lug bushing flanges of the actuator attach pin assembly, part number 1642699–101, of the MLG, in accordance with Lockheed Service Bulletin 093–32–256, dated November 11, 1994.

(1) If the inspection reveals that sealant is present, no further action is required by this AD.

(2) If the inspection reveals that no evidence of sealant is present, within 6 months after accomplishing the inspection, replace the actuator attach pin assembly with a serviceable unit in accordance with Lockheed Service Bulletin 093–32–256, dated November 11, 1994.

(b) As of the effective date of this AD, no actuator attach pin assembly, part number 1642699–101, shall be installed on the MLG of any airplane unless that assembly has been inspected in accordance with the requirements of paragraph (a) of this AD and evidence of sealant has been found; or unless that assembly has been reworked and reidentified with the letter ''A'' etched at the end of the serial number, in accordance with Lockheed Service Bulletin 093–32–256, dated November 11, 1994.

(c) 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, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

Issued in Renton, Washington, on April 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–10318 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–186–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 200 and 400 airplanes, that currently requires incorporation of certain structural modifications. That AD was prompted by reports of fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. The actions specified by that AD are intended to prevent reduced structural integrity of the airplane. This action would require incorporation of additional structural modifications.

DATES: Comments must be received by May 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–186–D, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–186–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–186–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On October 24, 1990, the FAA issued AD 90–23–09, amendment 39–6795 (55 FR 46502, November 5, 1990), applicable to certain British Aerospace Model BAC 1–11 200 and 400 airplanes, to require incorporation of certain structural modifications. That action was prompted by reports of fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. The requirements of that AD are intended to prevent reduced structural integrity of the airplane.

Since the issuance of that AD, British Aerospace has issued Alert Service Bulletin 5–A–PM5995, Issue 3, dated March 19, 1993, which references terminating modifications described in 16 service bulletins, and recommends that they be installed in the applicable British Aerospace Model BAC 1–11 airplanes. The modifications described in the service bulletins consist of:

—1 modification of the landing gear,

—5 modifications of the doors,

—5 modifications of the fuselage structure,

—3 modifications of the stabilizer, and

—2 modifications of the wings.

Additionally, Issue 3 of this alert service bulletin adds one new modification (fuselage structure) and revises the item numbers in Table 1 of several modifications that were previously addressed by AD 90–23–09.

Accomplishment of these modifications would terminate the repetitive inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
67–30–02	39–0507	32 FR 15421	November 4, 1967.
87–21–06	39–5744	52 FR 38396	October 16, 1987.
82–01–02 R1	39–4824	49 FR 9412	March 13, 1984.
83–20–02	39–4735	48 FR 44462	September 29, 1983.
88–11–09	39–5891	53 FR 17918	May 19, 1988.
72–06–01	39–1406	37 FR 4900	March 7, 1972.
71–25–02	39–1349	36 FR 22363	November 25, 1971.

Implementation of these modifications will positively address the unsafe condition identified as reduced structural integrity of the airplane. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this alert service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA,

reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 90–23–09 to require incorporation of additional structural modifications. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Operators should note that the actions specified as Items 6, 11, 13, and 14 in Table 1 of British Aerospace Alert Service Bulletin 5–A–PM5995, Issue 3, are not included in the proposed requirements of this AD due to the following reasons:

Item	Reason
6	Currently required by AD 91–06–16, amendment 39–6935.
11	Will be addressed in a separate rule-making action.
13	Currently required by AD 67–15–01, amendment 39–401.
14	Currently required by AD 67–14–04, amendment 39–397.

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 387 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour.

Required parts would cost approximately $10,315 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,039,585, or $33,535 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6795 (55 FR 46502, November 5, 1990), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 94–NM–186–AD. Supersedes AD 90–23–09, Amendment 39–6795.

Applicability: Model BAC 1–11 200 and 400 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to reaching the ''Not Exceed Time'' interval specified in Table 1 of British Aerospace Alert Service Bulletin 5–A–PM5995, Issue 3, dated March 19, 1993; or within 15 months after the effective date of this AD; whichever occurs later: Install the structural modification listed in each Item in Table 1 of the alert service bulletin, except for Items 6, 11, 13, and 14. The modifications shall be done in accordance with the appropriate service bulletin specified for each Item in Table 1, listed under ''Service Bulletin No.''

Note 2: Items 6, 11, 13, and 14 in Table 1 of British Aerospace Alert Service Bulletin 5–A–PM5995, Issue 3, are not included in the requirements of this AD since those items are addressed by separate rulemaking actions.

(b) Accomplishment of the modifications required by paragraph (a) of this AD constitutes terminating action for the repetitive inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
67–30–02	39–0507	32 FR 15421	November 4, 1967.
87–21–06	39–5744	52 FR 38396	October 16, 1987.
82–01–02 R1	39–4824	49 FR 9412	March 13, 1984.
83–20–02	39–4735	48 FR 44462	September 29, 1983.
88–11–09	39–5891	53 FR 17918	May 19, 1988.
72–06–01	39–1406	37 FR 4900	March 7, 1972.
71–25–02	39–1349	36 FR 22363	November 25, 1971.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–13, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on April 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–10320 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This document extends, by 30 days, the comment period of a document published by the Minerals Management Service (MMS) in the **Federal Register** on March 28, 1995 (60 FR 15888) which requested comments on a review of existing MMS regulations under Executive Order 12866. The extension was requested by the American Petroleum Institute.

DATES: The comment period is extended to May 27, 1995. Comments should be received or postmarked by that date.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4013; 1849 C Street NW.; Washington, DC 20240; Attention: Bettine Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, telephone (202) 208–3976; Fax (202) 208–4891.

Dated: April 21, 1995.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

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DEPARTMENT OF ENERGY

48 CFR Part 970

[Regulation Identifier Number 1991–AB20]

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Amendment of a notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today amends its March 2, 1995, notice of proposed rulemaking (60 FR 11646) which proposed amendments to the DOE Acquisition Regulation (DEAR) provisions applicable to subcontracting by management and operating contractors. Today's amendments do not affect the principal provisions of the proposal which are: Substitution of more commercial-like subcontracting objectives, expectations, and standards for the so-called ''Federal norm'' that, in effect, requires DOE's management and operating contractors to follow certain Federal-oriented prescribed procedures in their award of subcontracts; and elimination of the reference concerning General Accounting Office protest jurisdiction over such subcontract awards. Rather, this amendment of the earlier notice deals with administrative matters, mostly technical, that DOE reserved for further analysis and action during the public comment period. DOE today amends its notice of proposed rulemaking to redesignate most of the requirements of DEAR 970.7104 to two other subsections of the DEAR and to eliminate certain of them. The amendment also moves two paragraphs previously set forth in DEAR 970.7104 to another existing subsection.

DATES: Written comments on this amended notice of proposed rulemaking must be received on or before May 30, 1995. Comments on today's amendment should be submitted separately from those related to the March 2, 1995, notice of proposed rulemaking. This is necessary as the Department may elect to finalize those portions of the March 2 rule, which are unaffected by today's amendment, in more than one stage.

ADDRESSES: Comments on the proposed rulemaking should be sent to the following address: U.S. Department of Energy, Office of Contractor Management and Administration (HR–55), Attention: James J. Cavanagh, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James J. Cavanagh, Office of Contractor Management and Administration (HR–55), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585; telephone 202–586–8257.

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I. Background

On March 2, 1995, DOE published in the **Federal Register** (60 FR 11646) a notice of proposed rulemaking. That notice proposed to amend the DEAR to modify requirements for management and operating contractor purchasing systems. Principally, DEAR subpart 970.71 is being amended to identify certain purchasing system objectives and standards, eliminate the application of the ''Federal norm,'' place greater reliance on commercial practices, and remove the provisions concerning General Accounting Office protest jurisdiction over management and operating contractor subcontract awards.

Today's notice does not alter any of the above-described principal provisions of the proposed amendments. The main focus of this notice is an administrative matter discussed in the Supplementary Information section of the March 2 notice and reserved for further analysis and action during the comment period. That issue is whether to eliminate DEAR § 970.7104.

The March 2 proposed rulemaking stated:

> Section 970.7104, Conditions of purchasing by management and operating contractors, is removed. DOE believes it is not necessary to retain this section since many of the requirements comply with provisions of statutes and are already reflected in contract clauses. These requirements, will therefore, continue to be applicable as contractual requirements. Some of the requirements, however, are not specifically prescribed in other parts of the DEAR. The Department will review such requirements prior to finalization of this proposed rule and may redesignate appropriate paragraphs, in the final rule, to other parts of the DEAR, if necessary. If such requirements are identified, the Department will publish a **Federal Register** notice, prior to issuing a final rule, listing the paragraphs being considered for redesignation.

DOE's analysis showed that, except for seven items proposed for deletion as discussed below, most of the provisions of § 970.7104 should be retained either in the preaward process or in the subcontract document itself. Moreover, DOE has reconsidered the desirability of proposing to eliminate the convenient listing of these subjects and the clarity that comes with such a listing. Further, removing the section could be interpreted incorrectly as proposing to eliminate the underlying substantive requirements identified elsewhere. Therefore, DOE has chosen instead to propose elimination of seven subparagraphs of that section and relocation of most of the subjects from § 970.7104 to two contract clauses, thereby removing the content of § 970.7104 in its entirety. The amendment proposes no new policy and adds no new requirements for a contractor. For the most part, the regulatory treatment of each subject has been simplified and shortened. For details, see the section-by-section analysis below.

II. Section-by-Section Analysis

A. In accordance with Section II, paragraph 6 of the notice of proposed rulemaking published on March 2, 1995, the Department of Energy has performed a detailed review of the subjects covered by DEAR 970.7104 to determine which requirements should be redesignated in the other parts of the DEAR. This amendment to the notice of proposed rulemaking reflects the proposed disposition of the provisions of DEAR 970.7104–1 through 970.7104–47. The redesignation table set forth below will graphically reflect this proposed disposition.

B. The Department has decided that the subjects of 970.7104 which are to continue to play a part in the award of subcontracts under DOE management and operating contracts fall generally into two categories. The first category consists of processes that lead to the award of prospective subcontracts, and the second category consists of those clauses that should be included in appropriate subcontracts and provisions that guide the administration of certain of those clauses. As a result of this recognition, this amendment proposes to deal with the first category as additions to an existing clause. A new clause is proposed to deal with the subjects that comprise the second category.

C. This amendment proposes to add subjects in the first category to the clause currently set forth at 970.5204–22, ''Contractor Purchasing System.'' The March 2, 1995, notice of proposed rulemaking proposed to change paragraph (a) of 970.5204–22. Today's amendment proposes to further amend paragraph (a) to insert the phrase ''this clause, DEAR 970.5204–XX, and'' in the first sentence. It would also expand the content of that clause to cover requirements that directly relate to the management and operating contractor's purchasing system and methods in the award of subcontracts.

D. This amendment also proposes to identify subjects in the second category in paragraph (b) of a new clause at 970.5204–XX. The purpose of that clause would be to continue to provide a convenient listing of clauses and related requirements that management and operating contractors would be required to include in, or apply to, prospective subcontracts. That new clause in its paragraph (a) would contain a general instruction directing the inclusion of the listed clauses and, where appropriate, the application of attendant regulations governing the subject matter of the cited clause. Paragraph (a) would recognize that certain of the listed clauses flow down pursuant to the management and operating contractor's prime contract with the Department (e.g., Employment of the Handicapped). Certain other clauses that would be included in appropriate subcontracts either are not included in the prime contract (e.g., Service Contract Act) or, if included, do not contain a flowdown instruction. For these latter two types of clauses, paragraph (a) would instruct the contractor to apply requirements to subcontracts in the same manner as the Department does for the award of a DOE prime contract which is not a management and operating contract.

E. For certain subjects, such as termination and indemnification, there would be coverage of different aspects of the same subject in both of the clauses at 970.5204–22 and at 970.5204–XX.

F. The following table identifies the new location of each item in 970.7104 and indicates whether the original requirement for the subject provision is based on an Executive Order, Department policy, Federal regulation or statute.

Old citation 970.–	Subject	New citation 970.5204–
7104–1	Contingent Fees (P)	Deleted.
7104–2	Record Retention (S)	XX(b)(20).
7104–3	Utility Services (P)	22(b).
7104–4	Leasing Property, Plant or Equipment (P)	22(q).
7104–5	Leasing of Motor Vehicles (P)	22(m).
7104–6	Strategic and Critical Materials (P)	22(t).
7104–7	Purchases of Special Items (S/R/P)	22(p).
7104–8	Purchasing Alternative Determinations (P)	22(q).
7104–9	Qualification Requirements (P)	Deleted.
7104–10	Organization Conflicts of Interest (S)	XX(b)(16).
7104–11	Cost or Pricing Data (S)	XX(b)(5).
7104–12	Small Business and Small Disadvantaged Business Concerns (S)	XX(b)(23) and 970.1901.
7104–13	Labor Surplus Concerns (P)	Deleted.
7104–14	Convict Labor (P)	Deleted.
7104–15	Contract Work Hours and Safety Standards Act (S)	XX(b)(4).
7104–16	Davis-Bacon Labor Standards for Construction (S)	XX(b)(8).
7104–17	Walsh-Healey (P)	Deleted.
7104–18	Equal Employment Opportunity (E)	XX(b)(11).
7104–19	Service Contract Act (S)	XX(b)(22).
7104–20	Vietnam Vets (S)	XX(b)(24).
7104–21	Environmental & Occupational Safety & Health (S/P)	XX(b)(10).
7104–22	Buy American (S)	22(g).
7104–23	Patents, Data and Copyrights (S/P)	XX(b)(17).
7104–24	Bonds & Insurance (S/P)	22(f).
7104–25	Indemnification (S/P)	22(l) and XX(b)(14).

Old citation 970.–	Subject	New citation 970.5204–
7104–26	Taxes (P)	XX(b)(25).
7104–27	Audit of Subcontractors (S/R/P)	22(e).
7104–28	Construction & A–E conflict-of-interest (P)	22(h).
7104–29	Quality Assurance (P)	22(r).
7104–30	Termination (P)	22(v) and XX(b)(26).
7104–31	Authorization of Subcontractors' Use of Government Supply Sources (P)	Deleted.
7104–32	Safeguarding Classified Information (S)	XX(b)(21).
7104–33	Cost Accounting Standards (S)	XX(b)(7).
7104–34	Clean Air & Water (S/R)	XX(b)(3).
7104–35	Air Transportation by U.S. Flag Carriers (S)	XX(b)(1).
7104–36	Acquisition of Real Property (S/P)	22(c).
7104–37	Management, Acquisition and use of Information Resources (P)	22(n).
7104–38	Privacy Act (R)	XX(b)(19).
7104–39	Officials Not To Benefit (P)	Deleted.
7104–40	Subcontractors' Reporting Systems (P)	XX(b)(6).
7104–41	Employment of the Handicapped (S)	XX(b)(9).
7104–42	Unclassified Controlled Nuclear Information (R)	22(w).
7104–43	Government Property (S/R)	22(k).
7104–44	Foreign Travel (P)	XX(b)(13).
7104–45	Anti-Kickback (S)	XX(b)(2).
7104–46	Setoff of Assigned Subcontractor Proceeds (P)	22(s).
7104–47	Additional Flowdown and Extension Provisions	
	—Exam. of records by Comptroller General (S)	XX(b)(12).
	—Accts Records and Inspection (S/P)	XX(b)(20).
	—Printing (P)	XX(b)(18).
	—Priorities (S/R)	22(o).

(E)=Executive Order.
(P)=Policy.
(R)=Regulation.
(S)=Statute.

G. The substance of the material related to Small Business and Small Disadvantaged Business Concerns cited in DEAR Subpart 970.7104–12, paragraphs (a), (b), (c) and (d) have been relocated in DEAR Part 970.1901, paragraphs (c) and (d).

H. From DEAR 970.7104, it is proposed to delete seven subsections as identified and for the reasons set forth in the following table:

Old citation 970.–	Subject	Reason for deletion
7104–1	Contingent Fees	These subject matters have been incorporated into appropriate subcontracts of management and operating (M&O) contracts as a matter of DOE policy. Because it has been decided that these subject matters should be handled in the same manner as for subcontracts under non-M&O cost-reimbursement contracts, flowdown is no longer required.
7104–9	Qualification Requirements	
7104–14	Convict Labor	
7104–17	Walsh-Healy Public Contracts Act	
7104–39	Officials Not to Benefit	
7104–13	Labor Surplus Area Concerns	The preference of the Federal procurement system that this subsection reflected has been substantially altered by section 7101 of the Federal Acquisition Streamlining Act of 1994.
7104–31	Authorization for Subcontractors' Use of Government Supply Sources.	The authority for contracting officers to allow management and operating contractor subcontract level access to Government supply sources exists at DEAR 970.51.

I. This amendment to the March 2, 1995, notice of proposed rulemaking will also redesignate the substance of 970.7103, paragraph (c)(7) to 970.5204–22(e)(4) to make clear that the contractor is required to determine the allowability of subcontractor reimbursable costs in accordance with 48 CFR (FAR) part 31.

J. Conforming amendments will be made to 970.5204–21, –5204–24, –5204–45, and –5204–50 to remove references to text proposed to be deleted.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. All comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the **DATES** section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to

determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

IV. Procedural Requirements

The procedural requirements discussed in section IV of the Supplementary Information of the March 2, 1995, notice of proposed rulemaking (60 FR 11646) apply as well to this amendment of proposed rulemaking.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, D.C. on April 20, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

2. At 970.1901 add paragraphs (c) and (d) as follows:

970.1901 General.

* * * * *

(c) Contractors may provide in their purchasing systems and methods for the setting aside of requirements for small disadvantaged businesses, provided there are sufficient qualified entities available to assure effective competition, and provided that the cost or price of the successful offer is found by the contractor to be fair and reasonable.

(d) In pursuit of the objective of contractor purchasing of a fair proportion of supplies and services from small business concerns, small disadvantaged business concerns and woman-owned business concerns, the HCA may authorize the use of innovative means after receipt of proper approval by the Procurement Executive and the DOE Office of Small and Disadvantaged Business Utilization.

970.5204–21 Property.

3. At 970.5204–21, Property, remove the phrase ''As prescribed in 970.7104–43,'' from the introductory text.

4. At 970.5204–22, the clause ''Contractor Purchasing System'' is revised to read as follows:

970.5204–22 Contractor purchasing system.

* * * * *

Contractor Purchasing System (month year TBE)

(a) *General.* The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204–XX, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor's purchasing performance will be evaluated against agreed-upon criteria in accordance with the performance criteria and measures clause(s) set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

(b) *Acquisition of Utility Services.* Utility services shall be acquired in accordance with the requirements of 48 CFR (DEAR) 970.0803.

(c) *Acquisition of Real Property.* The contractor shall contract for real property in accordance with 48 CFR (DEAR) Subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* The contractor shall provide advance notice of proposed subcontract awards in accordance with 48 CFR (DEAR) 970.7109; shall document purchases in writing; and shall establish and maintain subcontract files which present an accurate and adequate record of all purchasing transactions.

(e) *Audit of Subcontractors.*

(1) The contractor shall assure that its purchasing systems and methods provide for: (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. Contractors' purchasing systems and methods shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors of any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR (FAR) part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102–15(b). In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(f) *Bonds and Insurance.*

(1) The contractor shall obtain from a subcontractor a payment bond on Standard Form 25A, modified to name the contractor as well as the United States of America as obligees, for all fixed price, unit-price and cost-reimbursement construction subcontractors in excess of $25,000. The penal amounts shall be determined as set forth in 48 CFR (FAR) 28.102–2(b).

(2) The contractor may accept more than one corporate surety upon recognizance, stipulation, bond, or undertaking in both construction and other contracts, provided that in no case will the liability of any co-surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety may reinsure amounts in excess of its capacity with a corporate surety having the required underwriting capacity that appears on the acceptable list of corporate sureties. No such reinsurance is acceptable in connection with construction subcontracts. Corporate co-sureties may individually obligate themselves for a definite sum less than the full amount of the bond; however, all such obligations must total the entire amount of the bond and each co-surety must bind itself ''jointly and severally'' for the purpose of allowing a joint action or actions against any or all of the corporate sureties.

(g) *Buy American.* The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (FAR) 52.225–3, as amended by 48 CFR (DEAR) 970.5203–3.

(h) *Construction and Architect-Engineer Contracts.*

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled ''General Design Criteria Manual.''

(3) *Prevention of Conflict of Interest.*

(i) The contractor shall not award a contract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a ''turnkey'' contract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement contract and a fixed-

price contract for construction or architect-engineer services or any combination thereof to the same firm where those contracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Purchase or transfer of equipment, materials, supplies, or services from a contractor-affiliated source shall be treated in accordance with 48 CFR (DEAR) 970.7105.

(j) *Contractor-Subcontractor Relationship.* The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* The contractor's purchasing system and methods for the identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR (FAR) part 45, 48 CFR (DEAR) part 945, the Federal Property Management Regulations, the DOE Property Management Regulations, and their contracts.

(l) *Indemnification.* No subcontractor may be otherwise indemnified except with the prior approval of the Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall abide by 48 CFR (FAR) 8.11 and 48 CFR (DEAR) 908.11.

(n) *Management, Acquisition and Use of Information Resources.* The contractor shall provide in its purchasing system and methods, with regard to the purchase of automatic data processing resources and telecommunications facilities, services, and equipment, for review and approval of requirements in ways that conform to the procedures contained in applicable DOE Directives (Orders and Notices).

(o) *Priorities, Allocations and Allotments.* The contractor shall provide in its purchasing system and methods for the extension to appropriate subcontracts of priorities, allocations and allotments in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(p) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) subpart 908.71 and the Federal Property Management Regulations, as shown:

(1) Motor vehicles 908.7101
(2) Aircraft 908.7102
(3) Security Cabinets 908.7106
(4) Alcohol 908.7107
(5) Helium 908.7108
(6) Fuels and packaged petroleum products 908.7109
(7) Coal 908.7110
(8) Arms and Ammunition 908.7111
(9) Heavy Water .....908.7121(a)
(10) Precious Metals .....908.7121(b)
(11) Lithium .....908.7121(c)
(12) Products and services of the blind and severely handicapped .....FPMR 41 CFR 101–26.701
(13) Products made in Federal penal and correctional institutions.....FPMR 41 CFR 101–26.702

(q) *Purchase vs. Lease Determinations.* The contractor shall provide for a system to determine whether required equipment and property should be purchased or leased. The system shall establish appropriate thresholds for application of lease vs. purchase determinations and shall be used in making such determinations: (1) at time of original acquisition; (2) when lease renewals are being considered; and (3) at other times as circumstances warrant.

(r) *Quality Assurance.* The contractor shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(s) *Setoff of Assigned Subcontractor Proceeds.* The contractor shall provide that in cases in which a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR (DEAR) 932.803.

(t) *Strategic and Critical Materials.* The contractor may use strategic and critical materials and shall fulfill its requirements in accordance with 48 CFR (FAR) 8.002.

(u) *Suspended, Debarred or Ineligible Contractors.* Proposed awards to firms or individuals on the GSA Consolidated List of Debarred, Suspended and Ineligible Contractors shall be forwarded to DOE for approval notwithstanding any prior purchasing system acceptance.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR (FAR) subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR (FAR) subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) *Unclassified Controlled Nuclear Information.* In its purchasing system and methods, the contractor shall provide for the treatment of unclassified uncontrolled nuclear information to be handled in accordance with 10 CFR part 1017.

970.5204–24 Subcontractor cost or pricing data.

5. At 970.5204–24, *Subcontractor cost or pricing data,* remove the phrase ''As prescribed in 970.7104–11,'' from the introductory text.

970.5204–45 Termination.

6. At 970.5204–45, *Termination,* remove the phrase ''As prescribed in 970.7104–30,'' from the introductory text.

970.5204–50 Cost and schedule control systems.

7. At 970.5204–50, *Cost and schedule control systems,* remove the phrase ''As prescribed in 970.7104–40,'' from the introductory text.

8. Add new subsection 970.5204–XX, *Flowdown of contract requirements to subcontracts,* to read as set forth below:

970.5204–XX Flowdown of contract requirements to subcontracts.

Insert the following clause.

Flowdown of Contract Requirements to Subcontracts (month year TBE).

(a) The contractor shall include the clauses in paragraph (b) of this clause in appropriate subcontracts.

(1) To the extent that the clause is included in this prime contract, the contractor shall comply with that portion of the clause that directs application to subcontracts.

(2) To the extent that the clause is not included in this prime contract, or where it is included, but there is no instruction for treatment in subcontracts, the contractor shall include the clause in accordance with applicable regulatory guidance which would apply if the subcontract were a prime contract with the Federal government.

(3) In all cases, where a regulation is cited, the contractor shall comply with the regulation in administration of the related clause.

(b) Clauses and related regulations.

(1) *Air transportation by U.S.-flag carriers.* Clause at 48 CFR (FAR) 52.247–63.

(2) *Anti-Kickback Act of 1986.* Clause at 48 CFR (FAR) 52.203–7.

(3) *Clean Air and Water.* Clause at 48 CFR (FAR) 52.223–2, and follow the requirements of 48 CFR (FAR) 23.1.

(4) *Contract Work Hours and Safety Standards Act.* Clause at 48 CFR (FAR) 52.222–4, and follow the requirements of 48 CFR (FAR) 22.3.

(5) *Cost or Pricing Data.* Clause at 48 CFR (DEAR) 970.5204–24.

(6) *Cost and Schedule Control Systems.* Clause at 48 CFR (DEAR) 970.5204–50.

(7) *Cost Accounting Standards.* Clause at 48 CFR (FAR) 52.230–2, as prescribed in 48 CFR (DEAR) 970.30.

(8) *Davis-Bacon Act.* Clauses as directed at 48 CFR (FAR) 22.407, and follow the requirements of 48 CFR (FAR) 22.4 to the same extent that they would apply if the subcontract had been directly awarded by DOE. 48 CFR (DEAR) Subpart 922.4 and 48 CFR (DEAR) 970.2273 provide guidance to assist in determining the applicability of these regulations.

(9) *Employment of the Handicapped.* Clause at 48 CFR (FAR) 52.222–36, and follow the requirements of 48 CFR (FAR) 22.14.

(10) *Environmental and Occupational Safety and Health.* Clauses as prescribed in 48 CFR (DEAR) 970.2303–2.

(11) *Equal Employment Opportunity.* Clauses as prescribed in 48 CFR (FAR) 22.810, as applicable, and follow the requirements of 48 CFR (FAR) 22.8, 48 CFR (DEAR) 922.8, E.O. 11246 and 40 CFR part 60.

(12) *Examination of Records by Comptroller General.* Clause at 48 CFR (FAR) 52.215–1.

(13) *Foreign Travel.* Clause at 48 CFR (DEAR) 970.5204–52.

(14) *Nuclear Hazards Indemnity.* Clause at 48 CFR (DEAR) 970.2870.

(15) *Officials Not To Benefit.* Clause at 48 CFR (FAR) 52.203–1.

(16) *Organizational Conflicts of Interest.* Clause at 48 CFR (DEAR) 952.209–72.

(17) *Patent, Data and Copyrights.* Appropriate clauses as required by 48 CFR (DEAR) parts 927 and 970.

(18) *Printing.* Clause at 48 CFR (DEAR) 970.5204–19.

(19) *Privacy Act.* Clauses at 48 CFR (FAR) 52.224–1 and 48 CFR (FAR) 52.224–2, and follow the requirements of 48 CFR (FAR) 24.1.

(20) *Record Retention.* Clause at 48 CFR (DEAR) 970.5204–9.

(21) *Safeguarding Classified Information.* Appropriate clauses as prescribed at 48 CFR (DEAR) 970.0404.

(22) *Service Contract Act.* Clauses at 48 CFR (FAR) 52.222–40 and 48 CFR (FAR) 52.222–41.

(23) *Small Business and Small Disadvantaged Business Concerns.* Clause at 48 CFR (FAR) 52.219–9.

(24) *Special Disabled and Vietnam Era Veterans.* Clause at 48 CFR (FAR) 52.222–35, and follow the requirements of 48 CFR (FAR) Subpart 22.13.

(25) *Taxes.* Clause at 48 CFR (DEAR) 970.5204–23.

(26) *Termination.* Appropriate clause or clauses as set forth at 48 CFR (FAR) 52.249–1 through 52.249–14.

(c) *Other.* Errors in or omissions from the above DOE-compiled listing of contract requirements requiring flowdown to appropriate subcontracts shall not be construed as waiving a requirement for the contractor to comply with a requirement for subcontracts appearing elsewhere in this contract or a requirement for subcontracts as required by law. Such errors or omissions shall not form the basis for a defense by the contractor in a legal or administrative proceeding.

[FR Doc. 95–10262 Filed 4–26–95; 8:45 am]

BILLING CODE 6450–01–P

Notices

Federal Register

Vol. 60, No. 81

Thursday, April 27, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

DATES: Tuesday, May 2, 1995, at 2:00 p.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will continue its discussion of a proposed recommendation on the review of existing agency rules.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: April 24, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–10434 Filed 4–26–95; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 21, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118

Revision

- Foreign Agricultural Service Request for Vessel Approval/Request for Vessel Approval (Cotton) CCC–105, C–105 (Cotton), Business or other for-profit; 161 responses; 81 hours, Connie B. Delaplane (202) 720–3664.
- Agricultural Marketing Service, Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon—Marketing Order No. 956 FV–112, FV–113, FV–113A, FV–114, and FV–115 Business or other for-profit; Farms; 26 responses; 8 hours, Teresa L. Hutchinson (503) 326–2724.

Extension

- Animal & Plant Health Inspection, 9 CFR 85 Pseudorabies, VS Form 7–1, Farms; Federal Government; State, Local or Tribal Government; 80,200 responses; 1,688 hours, Arnold C. Taft (301) 734–4916.

New Collection

- Forest Service, Attitudes & Values of Southern Appalachian Residents Toward Natural Environmental Issues, Individuals or households; 1,200 responses; 300 hours, Dr. Michael Tarrant (706) 542–4332.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–10288 Filed 4–26–95; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Mississippi Advisory Committee will convene from 9:00 a.m. and adjourn at 8:30 p.m. Wednesday and Thursday, May 24–25, 1995, at the Old Supreme Court Chamber, 400 High Street, Jackson, Mississippi 39202. The purpose of the factfinding meeting is to collect information on police-community relations in the city of Jackson.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 19, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–10304 Filed 4–26–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on brass sheet and strip From Canada. The review covers one manufacturer/exporter of this merchandise to the United States and the period January 1, 1992 through December 31, 1992. The review indicates the existence of dumping margins for this period.

We have preliminarily determined that U.S. sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sally Hastings, Chip Hayes, or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4366, 482–5047, or 482–0649.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Department published in the **Federal Register** (52 FR 1217) the antidumping duty order on brass sheet and strip from Canada. Based on timely requests for review, on March 8, 1993, in accordance with 19 CFR 353.22(c), we initiated an administrative review of Wolverine Tube (Canada) Inc. (Wolverine), for the period January 1, 1992 through December 31, 1992 (58 FR 12931). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included.

During the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings 7409.21.00 and 7409.29.00. Although the HTS subheadings are provided for convenience and for Customs purposes, the written description of the scope of this order remains dispositive. This review covers one Canadian manufacturer/exporter, Wolverine, and the period January 1, 1992 through December 31, 1992.

USP

We based USP on purchase price, in accordance with section 772 of the Tariff Act. We calculated purchase price based on delivered, duty-paid prices. In accordance with section 772(d)(2) of the Tariff Act, we made deductions for movement expenses and customs duty. Movement expenses included fees for brokerage and handling, and U.S. and foreign inland freight.

When comparisons were made to home market sales, we adjusted USP for taxes in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 31204, June 17, 1994 (*Silicomanganese*).

No other adjustments were claimed or allowed.

FMV

The Department used home market price to calculate FMV, as defined in section 773 of the Tariff Act. Because the home market was viable, we compared U.S. sales with sales of such merchandise in the home market.

FMV was based on packed, delivered prices to unrelated home market purchasers. We made adjustments, where applicable, for home market credit, post-sale inland freight, U.S. credit costs, GST, and U.S. packing costs.

We calculated FMV using monthly weighted-average prices of brass sheet and strip having the same characteristics as to alloy, product code, width group, and gauge group (as was done in earlier proceedings).

We also adjusted the amount of the home market GST included in FMV in accordance with our methodology in *Silicomanganese.*

No other adjustments were claimed or allowed.

Cost Test

Since the information supporting petitioners' allegation provided reasonable grounds to believe or suspect home market sales below cost, we investigated whether Wolverine sold such merchandise in the home market at prices below the cost of production (COP), in accordance with section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

We requested COP information on an alloy-specific basis because we have determined that alloy is a primary component and a major differentiating factor of brass sheet and strip products. The Court of International Trade (CIT) upheld the Department's use of alloy-specific information in *Hussey Copper, Ltd., et al.* v. *United States,* Slip Op. 94–81 (May 16, 1994). In response to our request, Wolverine reported COP as the sum of costs for materials, labor, factory overhead, selling, general and administrative (SG&A) expenses, and packing for each product code. Wolverine's product code, however, is a general categorization which does not distinguish between various alloys, gauges, and widths. Moreover, Wolverine did not suggest any allocation methodology that would result in alloy-specific data for the fabrication and packing costs for the class or kind of subject merchandise. As a result, we used, as partial best information available, in accordance with section 776(c) of the Tariff Act, the fabrication and packing cost portions of petitioners' data which were submitted in the sales-below-cost allegation. Since metal costs were maintained on an alloy-specific basis, we did use respondent's submitted metal prices from its daily metal price list for this element and its company data to compute SG&A expenses.

When less than 10 percent of the home market sales of a model were at prices below the COP, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV, provided that these below-cost home market sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model in our calculation of FMV.

To determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* (56 FR 31693, July 11, 1991).

Wolverine has not submitted information indicating that any of its sales below cost were made at prices which would have permitted ''recovery of all costs within a reasonable period of time in the normal course of trade,'' as required by section 773(b)(2) of the Tariff Act. Therefore, we have no basis for concluding that the costs of production of such sales have been recovered within a reasonable period of time. As a result of our investigation, we disregarded Wolverine's below-cost sales made over an extended period of time.

In accordance with section 773(a)(2), we used constructed value (CV) as FMV for those U.S. sales for which there were insufficient sales of the comparison home market model at or above the COP. We calculated CV in accordance with section 773(e) of the Tariff Act. CV includes the cost of materials and fabrication for the exported merchandise, plus SG&A expenses, profit, and packing. Because the respondent did not provide alloy-specific information on, nor any allocation of, fabrication and packing costs, we used the data supplied by petitioners for these cost factors in their submission of August 29, 1993. In our calculation of the SG&A expenses, we computed the actual percentage of costs using figures supplied by the respondent in its COP response. We multiplied that actual figure by the cost of manufacturing (COM). The COM is the sum of the cost of materials, which was supplied by the respondent, and the fabrication costs, which were supplied by the petitioners. We used the computed SG&A expenses since they were greater than the statutory minimum of 10 percent. Because the respondent's reported profit was less than eight percent of the COM plus general expenses, for profit we used the statutory minimum of eight percent.

For those models that had sufficient above-cost sales, we calculated FMV using home market prices to unrelated purchasers as described above.

Preliminary Results of Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following margin exists for the period January 1, 1992 through December 31, 1992:

Manufacturer/exporter	Margin (percent)
Wolverine	24.52

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tarriff Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 8.10 percent, the all others rate established in the LTFV investigation (51 FR 44319).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–10413 Filed 4–26–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–559–802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Reviews, Consideration of Revocation and Intent to Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Reviews, Consideration

of Revocation and Intent to Revoke Countervailing Duty Orders.

SUMMARY: We preliminarily determine that domestic parties are no longer interested in the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. We therefore intend to revoke the orders. The revocation will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995. We invite interested parties to comment on these preliminary results and our intent to revoke the orders.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie Brown or Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1995, the Torrington Company (Torrington), the petitioner, submitted a letter to the Department of Commerce (the Department) stating that it has no further interest in the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore for entries after December 31, 1994. Accordingly, Torrington requested revocation of the orders based on changed circumstances in accordance with 19 CFR 355.25(d)(1994).

These changed circumstances administrative reviews cover all producers and/or exporters of the subject merchandise and all shipments of this merchandise to the United States entered, or withdrawn from warehouse, for consumption on or after January 1, 1995.

Scope of the Reviews

Imports covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof. The subject merchandise covers five separate classes or kinds of merchandise and is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

Preliminary Results of Changed Circumstances Administrative Reviews and Intent to Revoke Countervailing Duty Orders

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (1995) (the Act), and §§ 355.22(h) and 355.25(d)(1994) of the Department's regulations, the Department may revoke a countervailing duty order if it concludes that ''changed circumstances'' have arisen such that the order is no longer of interest to interested parties (19 CFR 355.25(d)(1)(i)(1994)). We preliminarily determine that the petitioner's affirmative statement of no further interest in these proceedings, not opposed by statements of interest by other domestic interested parties, constitutes changed circumstances sufficient to warrant revocation of these countervailing duty orders. Therefore, we preliminarily determine to revoke the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore.

We are hereby notifying the public of our preliminary determination to revoke these countervailing duty orders. If this preliminary determination to revoke these orders is made final, the revocation will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995.

Therefore, we intend to instruct the U.S. Customs Service to terminate the suspension of liquidation and liquidate all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995, without regard to countervailing duties. We intend to instruct the U.S. Customs Service to refund with interest any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of these changed circumstances administrative reviews.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Department's regulations (1994).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c)(1994), are due. The Department will publish the final results of these changed circumstances administrative reviews and its decision on revocation of these countervailing duty orders, as well as the results of its analysis of issues raised in any case or rebuttal brief.

This notice of changed circumstances administrative reviews and intent to revoke are in accordance with sections 751(d)(1) and (3) of the Act (19 U.S.C. 1675 (d)(1) and (3)(1995)) and 19 CFR 355.22(h) and 355.25(d)(1994).

Dated: April 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix A—Scope of the Reviews

The products covered by these reviews, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate ''classes or kinds'' of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Such merchandise is classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.52, 8708.99.55, 8708.99.58, 8708.99.61, 8708.99.64, 8708.99.67, 8708.99.70, 8708.99.73, and 8708.99.80.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.52, 8708.99.70, 8708.99.73, and 8708.99.8055, 8708.99.70, 8708.99.73, and 8708.99.8058, 8708.99.70, 8708.99.73, and 8708.99.8061, 8708.99.70, 8708.99.73, and 8708.99.8064, 8708.99.70, 8708.99.73, and 8708.99.8067, 8708.99.70, 8708.99.73, and 8708.99.80.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings

which employ cylindrical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.52, 8708.99.70, 8708.99.73, and 8708.99.8055, 8708.99.70, 8708.99.73, and 8708.99.8058, 8708.99.70, 8708.99.73, and 8708.99.8061, 8708.99.70, 8708.99.73, and 8708.99.8064, 8708.99.70, 8708.99.73, and 8708.99.8067, 8708.99.70, 8708.99.73, and 8708.99.80.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.52, 8708.99.70, 8708.99.73, and 8708.99.8055, 8708.99.70, 8708.99.73, and 8708.99.8058, 8708.99.70, 8708.99.73, and 8708.99.8061, 8708.99.70, 8708.99.73, and 8708.99.8064, 8708.99.70, 8708.99.73, and 8708.99.8067, 8708.99.70, 8708.99.73, and 8708.99.80.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Such merchandise is classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.52, 8708.99.70, 8708.99.73, and 8708.99.8055, 8708.99.70, 8708.99.73, and 8708.99.8058, 8708.99.70, 8708.99.73, and 8708.99.8061, 8708.99.70, 8708.99.73, and 8708.99.8064, 8708.99.70, 8708.99.73, and 8708.99.8067, 8708.99.70, 8708.99.73, and 8708.99.80.

These reviews cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[FR Doc. 95–10406 Filed 4–26–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Vieques Marine Laboratories From an Objection by the Commonwealth of Puerto Rico

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

Mr. Charles R. Connelly, on behalf of the Vieques Marine Laboratories, Inc. (Appellant), filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's proposal to develop a mariculture shrimp farm in Puerto Ferro, Vieques, Puerto Rico. The proposed project site is located in one of the critical coastal wildlife areas of Puerto Rico. The Appellant has certified that the project, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with Puerto Rico's coastal management program (CMP).

The CZMA provides that a timely objection by a state, (including Puerto Rico), precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Grounds I and II. To make the determination that the proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or section 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's CMP. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Pamela B. Lawrence, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the PRPB.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the PRPB and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Pamela B. Lawrence, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

Dated: April 20, 1995.

Terry D. Garcia,

General Counsel.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 95–10335 Filed 4–26–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 042095C]

Endangered Species; Permits

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

ACTION: Notice of receipt of an application for modification 5 to scientific research and enhancement Permit 747 (P45H) and notice of withdrawal of an application for a scientific research permit (P578).

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service (FWS) has applied in due form for Modification 5 to scientific research and enhancement Permit 747 (P45H) and that the California Department of Water Resources (DWR) withdrew their scientific research permit application (P578) to take endangered Sacramento River winter-run chinook salmon.

DATES: Written comments or requests for a public hearing on the FWS permit modification request must be received on or before May 30, 1995.

ADDRESSES: The FWS permit modification application and related documents are available for review or by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Written comments, or requests for a public hearing on this modification application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: FWS (P45H) requests Modification 5 to scientific research and enhancement Permit 747 under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests authorization for an increased annual take of juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) to increase the understanding of juvenile salmonid rearing and outmigration and to assist with the evaluation of juvenile salmonid abundance and outmigration timing in the vicinity of the Red Bluff Research Pumping Facility. Modification 5 would be valid for the duration of the permit. Permit 747 expires on December 31, 1995.

On December 22, 1994, notice was published (59 FR 66006) that an application had been filed by DWR for a scientific research permit (P578) to take juvenile and adult, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) as authorized by the above laws and regulations. On January 30, 1995, DWR withdrew their scientific research permit application. DWR is now proposing to direct their research in 1995 at non-listed fish by beginning the project in the spring after the juveniles of this listed species outmigrate to the ocean.

Those individuals requesting a hearing on FWS's modification application (see **ADDRESSES**) should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: April 21, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 95–10316 Filed 4–26–95; 8:45 am]

BILLING CODE 3510–22–F

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on July 13–14, 1995, at The Phoenician in Phoenix, Arizona. On July 13, the Advisory Board meeting will start at 2 pm and end at 5:30 pm. On July 14, the Board will reconvene at 9:00 am and the meeting will end at 12:00 noon.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the International Travel Act, as amended, and provide guidance to the Under Secretary for Travel and Tourism.

Agenda Items Are as Follows

I. Call to Order
II. Roll Call
III. Administrative Details
IV. Current Legislative Issues
V. White House Conference on Travel & Tourism
VI. Miscellaneous
VII. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation of oral statements will be allowed.

Jay E. Stewart, Committee Control Officer, United States Travel and Tourism Administration, Room 1513, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–501–6985) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary for Travel and Tourism.

[FR Doc. 95–10337 Filed 4–26–95; 8:45 am]

BILLING CODE 3510–11–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; Notice to Add a System of Records.

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective without further notice on May 25, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Assistant Air Force Access Programs Officer, SAF/AAIA, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gibson at (703) 697–3491.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of Air Force record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 7, 1995, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (ORB) pursuant to paragraph 4c of Appendix I to ORB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: April 20, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

F021 AFSPC A

SYSTEM NAME:

Cable Affairs Personnel/Agency Records.

SYSTEM LOCATION:

Intercontinental Ballistic Missile Cable Affairs Offices at missile bases reporting to Headquarters Air Force Space Command. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-United States Air Force personnel/agencies who cross or could cross, inundate, or otherwise affect the Hardened Intersite Cable System (HICS) and/or its right-of-ways (ROW). The personnel/agencies include landowners, tenants, highway/road departments, public and private utility companies, contractors, farm agencies (federal, state, and local), municipal offices, and railroads.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting information on personnel/agencies who affect or are affected by the HICS and its ROW and/or actions on the HICS and its ROW.

Landowners and/or tenants information will include name, home address and home telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to track and monitor all agency activities that affect the HICS and its ROW (such as highway crossings, utility crossings, construction, earth moving, etc.) and could impair HICS hardness integrity.

Also used to maintain contact with personnel/agencies to coordinate HICS or HICS ROW maintenance/construction actions performed by the United States Air Force (USAF) or USAF contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Department of the Air Force 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and computer output products.

RETRIEVABILITY:

Records may be retrieved by name, address, phone number, ROW track number, ROW legal description, ZIP code, and missile flight areas.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until no longer needed for reference. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330–1030, and

Chief, Systems Management Division, Headquarters AFSPC, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–4400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330–1030, or to the

Chief, Systems Management Division, Headquarters AFSPC, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–4400.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330–1030, or to the

Chief, Systems Management Division, Headquarters AFSPC, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–4400.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Survey information obtained through replies from personnel/agencies as defined in *Categories of individuals* above. The surveys are sent to these personnel/agencies (usually via mail) at least every two years.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–10276 Filed 4–26–95; 8:45 am]
BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form; and OMB Control Number: Export Controlled DoD Technical Data Agreement; DD Form 2345; OMB Control Number 0704–0207.

Type of Request: Reinstatement.

Number of Respondents: 6,000.

Responses Per Respondent: 1.

Annual Responses: 6,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The information collected hereby, is used to determine and certify the eligibility of U.S. and Canadian defense contractors to obtain export-controlled data with military or space application, while preserving the requirements of the U.S. for export licenses where appropriate. Department of Defense Directive 5230.25, ''Withholding of Unclassified Technical Data from Public Disclosure,'' requires

submission of DD Form 2345, ''Militarily Critical Technical Data Agreement,'' for approval. This form also provides evidence to the U.S. and Canadian Defense Agencies that the contractor has in fact been certified to receive such critical technical data.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–10278 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form; and OMB Control Number: Individual MCJROTC Instructor Evaluation Summary; NAVMC 10942; OMB Control Number 0703–0016.

Type of Request: Reinstatement.

Number of Respondents: 240.

Responses Per Respondent: 1.

Annual Responses: 240.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 120.

Needs And Uses: The information collected hereby, provides an evaluation, as well as a written record of, the overall effectiveness and performance of Marine instructors who are significantly responsible for implementing the Marine Corps Junior Reserve Officers' Training Corps (MCJROTC) program.

Affected Public: Individuals of households; Businesses or other for-profit.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 20, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–10279 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Number: Academic Certification for Marine Corps Officer Candidate Program, NAVMC 10469, OMB No. 0703–0011.

Type of Request: Reinstatement.

Average Burden Per Response: 15 minutes.

Responses Per Respondent: 1.

Number of Respondents: 3,500.

Annual Burden Hours: 875.

Annual Responses: 3,500.

Needs and Uses: This form is used by the Marine Corps as a standardized method of determining the academic eligibility of applicants for all Reserve officer candidate programs.

Affected Public: Individuals or households, businesses or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, D.C. 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 20, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–10280 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Policy Board Advisory Committee; Notice of Advisory Committee Meeting

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 5–6 June 1995 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 20, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–10283 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Integration Group; Notice of Meeting

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on

Technology Investments for 21st Century Military Superiority, Integration Group will meet in closed session on May 19, June 23, and July 14, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: April 20, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–10284 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Unique Surveillance Technologies; Notice of Meetings

SUMMARY: The Defense Science Board Task Force on Unique Surveillance Technologies will meet in closed session on May 4–5, 1995, at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and evaluate Have Gaze and related surveillance technologies and to assess overall technological maturity, technical and operational issues, potential military utility, and appropriate technology investment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–10285 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Prohibition Against Unauthorized Use of Defense Mapping Agency Name, Initials or Seal

AGENCY: Department of Defense, Defense Mapping Agency.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public that the unauthorized use of the name, ''Defense Mapping Agency'', the initials, ''DMA'', or the official Defense Mapping Agency Seal, is now prohibited by law.

No person may use the Defense Mapping Agency name, initials or seal, or any colorable imitation of them, in connection with any merchandise, retail product, impersonation, solicitation, or commercial or related activity in a manner calculated or intended to give the impression that the use is approved or endorsed by the Secretary of Defense, without first obtaining written approval first the Secretary of Defense.

Authority to grant written approval for the use of the Defense Mapping Agency name, initials or seal has been delegated to the Director, Defense Mapping Agency. Anyone intending to use the Defense Mapping Agency name, seal or initials, or any colorable imitation of them, in connection with merchandise, retail products, impersonation, solicitation, or any commercial or related activity must obtain prior written approval by writing to the Defense Mapping Agency, Office of General Counsel, 8613 Lee Highway St–A–7, Fairfax, Virginia 22031–2137. Anyone now using the Defense Mapping Agency name, seal or initials, or any colorable imitation of them, in connection with merchandise, retail products, impersonation, solicitation, or any commercial or related activity without the written approval from the Secretary of Defense or the Director, Defense Mapping Agency should cease doing so immediately. The Attorney General is authorized to initiate civil proceedings in the district courts of the United States to enjoin persons who engage or who are about to engage in acts or practices which constitute or would constitute unauthorized use(s) of the Defense Mapping Agency name, initials or seal.

EFFECTIVE DATE: October 5, 1994.

ADDRESSES: Defense Mapping Agency, Associate General Counsel for Information and Privacy, 8613 Lee Highway, St–A–7, Fairfax, Virginia 22031–2137.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Sharetts-Sullivan, Associate General Counsel, Information & Privacy, (703) 285–9315.

SUPPLEMENTARY INFORMATION: The prohibition against the use of the Defense Mapping Agency name, initials or seal, or any colorable imitation of them can be found in Section 1074 of the National Defense Authorization Act for Fiscal Year 1995 (10 U.S.C. § 2797). In civil proceedings initiated by the Attorney General to enjoin unauthorized usage of the Defense Mapping Agency name, initials or seal, the Court may issue restraining orders or prohibitions, or take such other actions as are warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought, pending the outcome of the civil proceeding.

Dated: April 20, 1995.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 95–10281 Filed 4–26–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

CNO Executive Panel Task Force on Naval Surface Warship Design; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet May 9-10, 1995, from 9:00 a.m. to 4:00 p.m., on each day at 4401 Ford Avenue, Room 531, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct executive level discussions about the task force final report. The matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: April 18, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–10342 Filed 4–26–95; 8:45 am]

BILLING CODE 3810–FF–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293A]

Foreign Language Assistance Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The purpose of this program is to provide grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students.

Eligible Applicants: State educational agencies and local educational agencies.

Deadline for Transmittal of Applications: June 5, 1995.

Deadline for Intergovernmental Review: August 4, 1995.

Applications Available: April 27, 1995.

Available Funds: $7,900,000.

Estimated Range of Awards: $150,000–$200,000.

Estimated Average Size of Awards: $175,000.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85.

SUPPLEMENTARY INFORMATION:

Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act) authorizes two grant programs, the Foreign Language Assistance Grants program and the Elementary School Incentive Grants program. Appropriations for these two programs are authorized by section 7206 of the Act. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in elementary grades. The Secretary, therefore, in selecting applicants under this program and the Elementary School Incentive Grants program will ensure that the requirement in section 7203(c)(3) on the use of funds appropriated under section 7206 is met. The Secretary does not fund projects that propose Native American languages.

Priority

The competitive priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition. This competitive priority relates to projects that focus on less commonly taught languages.

Selection Criteria

In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Meeting the purpose of the authorizing statute (34 CFR 210 (b)(1)). Seven points are added to this criterion for a possible total of 37 points.

Plan of operation (34 CFR 75.210(b)(3)). Five points are added to this criterion for a possible total of 20 points.

Evaluation plan (34 CFR 75.210(b)(6)). Three points are added to this criterion for a possible total of 8 points.

For Applications or Information Contact: Ursula Lord, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: Ursula Lord (202) 205–5709. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the 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. 7512–7514.

Dated: April 11, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–10322 Filed 4–26–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the third meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATES AND TIMES: The committee session will begin at 8:00 am Monday May 15, 1995 with the public comment session to begin at 7:00 pm. The Tuesday, May 16, 1995, session will begin at 7:30 am and adjourn at 9:30 am at which time the Committee will tour select Department of Energy Hanford facilities.

ADDRESSES: Red Lion Inn/Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Tom Isaacs, Executive Director, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide the Secretary of Energy, the White House Council on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to nuclear safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 25 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, state,

Tribal, regulatory, and industry interests and experience.

Purpose of the Meeting

This is the third meeting of the Committee. The Committee will receive presentations by representatives of relevant regulatory and oversight organizations and by DOE, industry and stakeholder organizations associated with the Hanford site. The Committee will also hold a public comment period to receive input from the public and tour appropriate facilities at Hanford.

Tentative Agenda

In addition to conducting deliberations related to its charge, the Advisory Committee will receive a presentation on the Nuclear Regulatory Commission's perspective on regulation of safety at DOE's nuclear facilities by the Chairman of the Nuclear Regulatory Commission. Other speakers will address the current processes for internal and external oversight of nuclear safety at DOE and the implementation and oversight of the regulatory framework at the Hanford site by DOE, the State, EPA, and others. The agenda will provide opportunities for public comment at 7:00 pm at the Red Lion Inn/Hanford House in the Columbia Meeting Room. A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public are welcome to make oral statements during the public comment period. Those who wish to do so should contact Catherine Volk at the address or telephone number listed above. Individuals may also register on May 15, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak. Written comments are welcomed, and should be mailed to Catherine Volk, 1726 M St. NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript will also be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC, on April 24, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–10407 Filed 4–26–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Wednesday, May 17, 1995, 9:00 AM.

Place: Ritz-Carlton Washington Hotel, 2100 Massachusetts Avenue, N.W., Washington, D.C. 20008.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Call to order and opening remarks by Joseph Craft III, Chairman of the National Coal Council.
—Presentation of the Council's study on coal utilization to the membership for approval.
—Remarks and presentation of awards to long-time members by the Honorable Hazel R. O'Leary, Secretary of Energy (Invited).
—Industry salute to the Council on the occasion of its tenth anniversary by: Richard Lawson, President of the National Mining Association; Thomas Kuhn, President of the Edison Electric Institute; and Edwin Harper, President of the Association of American Railroads.
—Discussion of any other business properly brought before the Council.
—Remarks by Patricia Fry Godley, Assistant Secretary for Fossil Energy (invited).
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 24, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–10408 Filed 4–26–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP95–327–000]

Transwestern Pipeline Co.; Notice of Application

April 21, 1995.

Take notice that on April 17, 1995, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–327–000, an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(a) of the Regulations (18 CFR 157.7(a)), for a certificate of public convenience and necessity authorizing Transwestern to construct approximately 3,200 feet of 30-inch pipeline under the Rio Grande River in Valencia County, New Mexico, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern explains that on August 20, 1994, an explosion ruptured one of its two 30-inch pipelines which cross the Rio Grande River on a steel structure pipeline bridge. Transwestern says it replaced that pipeline and repaired the structural damage to the bridge under section 2.55(b) of the Commission's Regulations. The second pipeline was not replaced at that time.

Transwestern proposes to replace the second 30-inch pipeline by constructing 3,200 feet of 30-inch pipeline under the Rio Grande River at a cost of $1,675,000. Transwestern states that it will be reimbursed the cost by its insurance carrier. Transwestern asserts that with the addition of this second line it will be able to bring its pipeline capability up to its presently certificated capacity.

Transwestern requests certificate authorization by June 30, 1995, so that construction can take place between July 15 through September 30 and the facility can be put in service in 1995. Transwestern submits that this construction time period would have minimal effect on such things as the Silvery Minnow, because of the low water flow, and would avoid disturbing two whooping cranes who overwinter in the area.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–10289 Filed 4–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–236–000]

Kern River Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

April 21, 1995.

Take notice that on April 17, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on June 1, 1995:

First Revised Sheet No. 104
Second Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 121
First Revised Sheet No. 122
First Revised Sheet No. 415

Kern River states that the revised tariff sheets make certain minor changes to Kern River's capacity release program which will allow that program to operate more efficiently and increase its value and usefulness to shippers. Specifically, the revised tariff sheets will:

1. Shorten the minimum time periods for a release that involves a Prearranged Bidder, to permit such a release request to be initiated closer to the proposed commencement date of the release;

2. Define release proposals that may take advantage of shorter deadlines and processing periods as releases of ''three months or less,'' rather than the current definition of ''90 days or less,'' so that proposed releases that include months of 31 days can take advantage of the shorter deadlines and time periods;

3. Eliminate the requirement for the Releasing Shipper with a Prearranged Bidder to warrant that the Prearranged Bidder has entered into a Released Transportation Service Agreement with Kern river that incorporates all terms and conditions of the Release Request. Prearranged Bidders will still be required to prequalify with Kern River by entering into a Released Transportation Service Agreement after demonstrating sufficient creditworthiness.

Kern River states that the revised tariff sheets also update the telephone number of Kern River's Transportation Services Department.

Kern River states that copies of the filing were served upon Kern River Gas Transmission Company's jurisdictional customers all affected State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 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 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–10290 Filed 4–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–001]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

April 21, 1995.

Take notice that on April 17, 1995, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective April 1, 1995:

Substitute Original Sheet No. 75C
Substitute Second Revised Sheet No. 155
Substitute Third Revised Sheet No. 161

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's March 31, 1995, ''Order Accepting Tariff Sheets Subject To Conditions And Establishing Technical Conference,'' to be effective April 1, 1995.

ANR states that all of its FERC Gas Tariff, Second Revised Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before April 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–10291 Filed 4–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–220–008, RP95–187–002 and TM95–2–37–002]

Northwest Pipeline Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 21, 1995.

Take notice that on April 17, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing as part of its FERC Gas Tariff the following

tariff sheets with a proposed effective date of April 1, 1995 to comply with the Commission's March 31, 1995 Order in Docket Nos. RP95–187–000 and TM95–2–37–000:

Third Revised Volume No. 1

Sixth Revised Sheet No. 5
Fifth Revised Sheet No. 5–A
Fifth Revised Sheet No. 8

Original Volume No. 2

Twentieth Revised Sheet No. 2
Fifteenth Revised Sheet No. 2.1
Nineteenth Revised Sheet No. 2–A

On March 1, 1995 in Docket No. RP95–187–000, Northwest filed primary and alternate proposed tariff sheets to implement new fuel use requirements factors with an effective date of April 1, 1995. On March 31, 1995, the Commission accepted Northwest's primary tariff sheets subject to refund and conditions, and subject to the outcome of a technical conference. The Commission's March 31, 1995 Order was conditioned on Northwest filing certain workpapers by April 17, 1995 and filing revised tariff sheets.

Northwest states that the purpose of this filing is to submit the revised tariff sheets. Northwest states that the revised tariff sheets reflect the removal of certain costs related to lost and unaccounted-for gas from Northwest's current base tariff rates in Docket No. RP94–220. Northwest further states that the aforementioned workpapers are being filed concurrently in Docket No. RP95–187.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers, upon all intervenors in Docket Nos. RP94–220, RP95–187 and TM95–2–37, and upon relevant state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before April 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–10292 Filed 4–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–187–001; TM95–2–37–001]

Northwest Pipeline Corp.; Notice of Compliance Filing

April 21, 1995.

Take notice that on April 17, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing with the Federal Energy Regulatory Commission (Commission) workpapers to comply with the Commission's March 31, 1995 Order in Docket Nos. RP95–187–000 and TM95–2–37–000. On March 1, 1995 in Docket No. RP95–187–000, Northwest filed primary and alternate proposed tariff sheets to implement new fuel use requirements factors with an effective date of April 1, 1995. On March 31, 1995, the Commission accepted Northwest's primary tariff sheets subject to refund and conditions, and subject to the outcome of a technical conference. The Commission's March 31, 1995 Order was conditioned on Northwest filing certain workpapers by April 17, 1995 and filing revised tariff sheets.

Northwest states that the purpose of this filing is to file the aforementioned workpapers. Revised tariff sheets reflecting the removal of certain costs related to lost and unaccounted-for gas from Northwest's current base tariff rates are being filed concurrently in Docket No. RP94–220.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers, upon all intervenors in Docket Nos. RP95–187–000 and TM95–2–37–000, and upon interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before April 27, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–10293 Filed 4–26–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Environmental Compliance Training Course

April 21, 1995.

The Office of Pipeline Regulation (OPR) staff will convene another session of its environmental compliance training course. This is a result of the positive response to the sessions held in 1992 through 1994. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations.

We encourage interested organizations and the public to take advantage of this course.

It will include the following topics:

- Postcertificate clearance filings;
- Environmental inspection as it relates to:
- Right-of-way preparation;
- Temporary erosion control;
- Cultural resources/Paleontology;
- Waterbody crossings;
- Wetland construction;
- Residential area construction;
- Right-of-way restoration; and
- Techniques for environmental compliance.

The two-day training course will be held May 23 and 24, 1995, at the Fairmont Hotel, 123 Baronne Street, New Orleans, Louisiana, 70140. Attendees must call (800) 527–4727 by May 8, 1995 and identify themselves as FERC Seminar attendees to receive the discounted group rate.

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the course, but you must pre-register because space is limited.

If you would like to attend the May 23, 1995 session, please call the telephone number listed below to obtain a registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone: (617) 542–8805, FAX: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the training course.

[1] The registration form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

Additional training will be offered in August and September of 1995, in Salt Lake City and Detroit, respectively. Please indicate on the registration form whether you would like this course to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

When the Salt Lake City and Detroit locations and dates are decided, information will be published in the **Federal Register** and sent to you. If other sessions or courses are planned, information will be published in the **Federal Register** and sent to you announcing the dates and locations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–10294 Filed 4–26–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1046–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1046–DR), dated March 12, 1995, and related determinations.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 19, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–10350 Filed 4–26–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1008–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1008–DR), dated January 17, 1994, and related determinations.

EFFECTIVE DATE: April 18, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Laurence Zensinger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of William C. Tidball as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–10351 Filed 4–26–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Royal Caribbean Cruises Ltd. and G.I.E. Cruise Vision Two, 1050 Caribbean Way, Miami, Florida 33132–2096

Vessel: SPLENDOUR OF THE SEAS

Dated: April 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10301 Filed 4–26–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended.

Royal Caribbean Cruises Ltd., 1050 Caribbean Way, Miami, Florida 33132–2096

Vessels: LEGEND OF THE SEAS AND SPLENDOUR OF THE SEAS.

Dated: April 21, 1995.

Joseph C. Polking,

Secretary.

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended.

Royal Caribbean Cruises Ltd. and G.I.E. Cruise Vision One, 1050 Caribbean Way, Miami, Florida 33132–2096

Vessel: LEGEND OF THE SEAS

Dated: April 21, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10303 Filed 4–26–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (46 U.S.C. 817(d)) and

the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Crystal Cruises, Inc. and Crystal Ship (Bahamas) Limited, 2121 Avenue of the Stars, Suite 200, Los Angeles, California 90067

Vessel: CRYSTAL SYMPHONY

Dated: April 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10414 Filed 4–26–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

SCR International Freight Forwarding, Inc., 130 Monorca Ave., Coral Gables, FL 33134, Officers: Alvaro G. Smith, President, Jose E. Smith, Treasurer

AIS Gator Exports, Inc., 201 Springsong Road, Lithia, FL 33547, Officers: Henry S. Conrad, Jr., President, Anita P. Conrad, Vice President

Sisto International Shipping, 560 Lee Drive, Miami Springs, FL 33166, Manuel Sisto and Tracy Sisto, Partnership

By the Federal Maritime Commission.

Dated: April 24, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–10415 Filed 4–26–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Affiliated Community Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Affiliated Community Bancorp, Inc., Waltham, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Lexington Savings Bank, Lexington, Massachusetts.

In connection with this application, Applicant also has applied to acquire Main Street Community Bancorp, Inc., Waltham, Massachusetts, and thereby indirectly acquire Federal Savings Bank, Waltham, Massachusetts, and thereby engage in owning, controlling, and operating a savings association that engages only in deposit-taking activities and lending and other activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. CENIT Bancorp, Inc., Norfolk, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Princess Anne Bank, Virginia Beach, Virginia.

In connection with this application, Applicant also has applied to acquire CENIT Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–10324 Filed 4–26–95; 8:45 am]

BILLING CODE 6210–01–F

Country Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 22, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Country Bank Shares, Inc., Milford, Nebraska; to acquire 100 percent of the voting shares of The Bank of Wilber, Wilber, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. California Bancshares, Inc., San Ramon, California; to acquire 100 percent of the voting shares of First Community Bankshares, Inc., Castro Valley, California, and thereby indirectly acquire Centennial Bank, Castro Valley, California.

Board of Governors of the Federal Reserve System, April 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–10325 Filed 4–26–95; 8:45 am]

BILLING CODE 6210–01–F

Mercantile Bancorporation, Inc.; 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 12, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire Southwest Insurance Agency, Hermitage, Missouri, an operating division of Southwest Bancshares, Inc., Bolivar, Missouri, and thereby engage in general insurance activities in a town with a population not exceeding 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. The geographic scope for these activities is the town of Hermitage, Missouri.

Board of Governors of the Federal Reserve System, April 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–10326 Filed 4–26–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Stocking Change and Revision of SF 526, Medical Record—Interstitial/Intercavitary Therapy

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 526, Medical Record—Interstitial/Intercavitary Therapy. This form is now authorized for local reproduction. You can request camera copy of SF 526 from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

This form also is revised to:

To delete ''grade'' and ''date'' from ''PATIENT'S IDENTIFICATION'' item and replace with ''ID No. (SSN or other);''.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective upon publication in the **Federal Register.**

Dated: April 19, 1995.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 95–10306 Filed 4–26–95; 8:45 am]

BILLING CODE 6820–34–M

Interagency Committee for Medical Records (ICMR) Stocking Change and Revision of SF 536, Medical Record—Pediatric Nursing Notes

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 536, Medical Record—Pediatric Nursing Notes. This form is now authorized for local reproduction. You can request camera copy of SF 536 from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

This form also is revised to:

To delete ''grade'' and ''date'' from ''PATIENT'S IDENTIFICATION'' item and replace with ''ID No. (SSN or other);''.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

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[FR Doc. 95–10306 Filed 4–26–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/RHYP 95–1]

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1995 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1995, and Request for Applications

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Fiscal Year 1995 Final Runaway and Homeless Youth (RHY) Program Priorities, announcement of availability of financial assistance, and request for applications for the Basic Center Program for Runaway and Homeless Youth (BCP) and the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP).

SUMMARY: The Family and Youth Services Bureau of the Administration

on Children, Youth and Families is publishing final program priorities and announcing the availability of funds for:

1. The Basic Center Program for Runaway and Homeless Youth (BCP). The purpose of the BCP is to provide financial assistance to establish or strengthen locally-controlled centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families.

2. The Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP). The purpose of the DAPP is to improve and expand drug abuse prevention, education and information services to runaway and homeless youth and their families.

This single announcement for the two programs has been developed in order to save the field and the Federal government significant resources. Also, the single announcement provides the field with the application due dates for both programs, providing interested agencies the means to forecast the workload and resources needed to apply for these grants. Potential applicants should note that separate applications must be submitted for each program applied for.

This announcement contains all the necessary information and application materials to apply for funds under these grant programs. The estimated funds available for new starts and the approximate number of new grants that have been or are to be awarded under this program announcement are as follows:

Program	Fiscal year	New start funds available (million)	Number of new grants
BCP	1995	$14.6	115
DAPP	1995	$4.5	45
TLP*	1995	$6.3	36

*There will be no FY 1995 requests for applications for the Transitional Living Program for Homeless Youth (TLP). FY 1995 funds for new TLP programs have already been awarded based on an FY 1994 competition.

In addition to the competitive, new start grants, the Administration on Children, Youth and Families anticipates providing FY 1995 non-competitive, continuation funds to current grantees, including Demonstration Projects (DEMOS), as follows:

Program	Continuation funds available (million)	Number of continuation grants
BCP	$21.8	227
DAPP	$6.6	72
TLP	$6.6	36
DEMOS (rural)	$1.3	8

Grantees eligible for these continuation grants will receive letters to that effect from the appropriate regional grants management offices and should not submit their continuation applications in response to this announcement. Only applications for new grants are solicited through this announcement.

DATES: The deadlines or closing dates for RECEIPT by HHS of applications for new grants under this announcement are as follows:

Programs	Closing dates
BCP	June 16, 1995.
DAPP	June 30, 1995.

Applications will be considered as meeting the deadline if they are received on or before the RECEIPT date at the address below. *Please note that this is a departure from the traditional approach of using postmarks instead of receipt dates to determine eligibility of applications for review.*

ADDRESSES: Application receipt point: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20447. Attn: Maiso Bryant, ACF–95–ACYF/RHYP.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at:

Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20047

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP) or Drug Abuse Prevention Program (DAPP).

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Family and Youth Services Bureau, PO Box 1182, Washington, DC 20013; Telephone: 1–800–351–2293.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I provides general information for potential applicants who wish to apply to operate programs serving runaway and homeless youth. Part II contains the evaluation criteria against which all applications will be competitively reviewed, evaluated and rated. Part III contains specific information necessary to apply for funds under each of the two programs. Part IV describes the application process. Part V provides instructions on the assembly and submission of applications. Part VI contains appendices to be consulted in preparation of applications. All forms needed to prepare applications for the two programs are found in Part VI, Appendix I, of this announcement.

The following outline is provided to assist in the review of this **Federal Register** announcement:

Part I: General Information
A. Background on Runaway and Homeless Youth
B. Legislative Authority
C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs
1. Basic Center Program for Runaway and Homeless Youth
2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
D. Definitions
E. Final Priorities
1. Public Comments in Response to the Proposed Priorities
2. Final Program Priorities for Fiscal Year 1995
a. Basic Center Program Grants
b. Transitional Living Program Grants
c. National Communications System
d. Support Services for Runaway and Homeless Youth Programs
(1) Training and Technical Assistance
(2) National Clearinghouse on Runaway and Homeless Youth
(3) Runaway and Homeless Youth Management Information System (RHYMIS)
(4) Monitoring Support for FYSB Programs
e. Research and Demonstration Initiatives
(1) Services for Youth in Rural Areas
(2) Analysis, Synthesis, and Interpretation of New Information Concerning Runaway and Homeless Youth
f. Priority for a Comprehensive Youth Development Approach
g. Priorities for Administrative Changes
F. Eligible Applicants
G. Availability of Competitive New Start Funds
1. Basic Center Program for Runaway and Homeless Youth
2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
H. Duration of Projects
I. Maximum Federal Award and Grantee Share of the Projects

Part II: Evaluation Criteria

Part III: Program Areas

A. Basic Center Program for Runaway and Homeless Youth
B. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP)

Part IV: Application Process

A. Assistance to Prospective Grantees
B. Application Requirements
C. Paperwork Reduction Act of 1980
D. Notification Under Executive Order 12372
E. Availability of Forms and Other Materials
F. Application Consideration

Part V: Application Content, Instructions, Assembly and Submission

Part VI: Appendices

A. Basic Center Program Performance Standards
B. National Runaway Switchboard
C. National Clearinghouse on Runaway and Homeless Youth
D. Runaway and Homeless Youth Continuation Grantees
1. Basic Center Program for Runaway and Homeless Youth
2. Drug Abuse Prevention Program for Runaway and Homeless Youth
E. Administration for Children and Families Regional Office Youth Contacts
F. Training and Technical Assistance Providers
G. State Single Points of Contact
H. Basic Center Program Allocations by State
I. Forms and Instructions

Part I. General Information

A. Background on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB), within the Administration on Children, Youth and Families (ACYF), administers programs that support services to an adolescent population of approximately 500,000 runaway and homeless youth. Many of these youth have left home to escape abusive situations, or because their parents could not supply their basic needs of food, shelter and a safe supportive environment. Many live on the streets.

While living on the streets or away from home without parental supervision, these youth are highly vulnerable. They may become victims of street violence, or may be exploited by dealers of illegal drugs. Usually lacking marketable skills, they may be drawn into shoplifting, prostitution, or dealing drugs in order to earn money for food, clothing, and other daily expenses. Without a fixed address or regular place to sleep, they often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society. As street people, they may try to survive with little or no contact with medical professionals, the result being that their health problems may go untreated and may worsen. Without the support of family, schools, and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work at other than the most minimal levels. Finally, as street people, they may create substantial law enforcement problems, endangering both themselves and the communities in which they are located. All these problems, real and potential, call for a comprehensive, nationwide, community-based program to address the needs of runaway and homeless youth.

B. Legislative Authority

Grants for the Basic Center Program for Runaway and Homeless Youth are authorized by Part A of the Runaway and Homeless Youth Act (RHY Act), 42 U.S.C. 5701 *et seq.* The RHY Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95–115), the Juvenile Justice Amendments of 1980 (Pub. L. 96–509), the Juvenile Justice Amendments of 1984 (Pub. L. 98–473), the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), and the Juvenile Justice and Delinquency Prevention Act Amendments of 1992 (Pub. L. 102–586). Grants for coordinating, training and technical assistance, research, demonstration, evaluation and service projects are authorized under Part D of the RHY Act.

Grants for the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth are authorized under section 3511 of Public Law 100–690, the Anti-Drug Abuse Act of 1988 (Anti-Drug Abuse Act), which established the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth, as amended by Public Law 102–132.

C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs

1. Basic Center Program for Runaway and Homeless Youth

The overall purpose of the BCP is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (outreach, temporary shelter, food, clothing, counseling, aftercare, and related services) of runaway and homeless youth and their families. Services supported by this program are to be outside the law enforcement, the child welfare, the mental health, and the juvenile justice systems. The program goals and objectives of Part A of the RHY Act are to:

a. Alleviate problems of runaway and homeless youth,

b. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services,

c. Strengthen family relationships and encourage stable living conditions for youth, and

d. Help youth decide upon constructive courses of action.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth

The overall purpose of the DAPP is to help communities address the problem of drug abuse among runaway and homeless youth through the prevention, early intervention, and reduction of drug dependency. The specific goals and objectives of the program, as set forth in Section 3511 of the Anti-Drug Abuse Act, are to:

a. Provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth;

b. Develop and support peer counseling programs related to the illicit use of drugs by runaway and homeless youth;

c. Develop and support community education activities related to the illicit use of drugs by runaway and homeless youth, including outreach to individual youth;

d. Provide runaway and homeless youth in rural areas with assistance (including the development of community support groups) related to the illicit use of drugs;

e. Provide information and training regarding issues related to the illicit use of drugs by runaway and homeless youth to individuals providing services to these youth;

f. Support research on illicit drug use by runaway and homeless youth, the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide; and

g. Improve the availability and coordination of local services related to drug abuse for runaway and homeless youth.

Specifics regarding grant awards in each of these two programs are found in Part III, Sections A and B, of this announcement.

D. Definitions

1. Under Part A of the RHY Act, which authorizes the BCP, the term

homeless youth means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care. This definition applies to all Basic Center projects and can be found in 45 CFR 1351.1(f).

2. The term *public agency* means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing. This definition applies to all runaway and homeless youth programs and can be found in section 3601(8) of the Anti-Drug Abuse Act, incorporating by reference section 103(11) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

3. The term *runaway youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian. This definition applies to all Basic Center programs and can be found in 45 CFR 1351.1(k).

4. The term *shelter* includes host homes, group homes and supervised apartments. This definition applies to all BCP programs and is referenced in section 322(1) of the RHY Act. As currently understood in the field:

Host homes are facilities providing shelter, usually in the home of a family, under contract to accept runaway and/or homeless youth assigned by the BCP service provider, and are licensed according to State or local laws.

Group homes are single-site residential facilities designed to house BCP clients who may be new to the program or may require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

5. The term *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas. This definition applies to all runaway and homeless youth programs and can be found in section 3601(10) of the Anti-Drug Abuse Act, incorporating by reference section 103(7) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

6. The term *temporary shelter* means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services on a 24 hour basis. This definition applies to all Basic Center Program grantees and can be found in 45 CFR 1351.1(o).

E. Final Priorities

Section 364 of the Runaway and Homeless Youth Act (RHY Act) requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the RHY Act. The proposed plan for FY 1995 was published in the **Federal Register** on Thursday, January 5, 1995, and requested comments and recommendations from the field.

1. Public Comments in Response to the Proposed Priorities

The Family and Youth Services Bureau (FYSB) received 14 written responses from a number of sources, principally Runaway and Homeless Youth Program grantees, in nine different States. The responses were generally supportive and the following summarizes the major issues raised:

a. A number of respondents suggested that the change in the proposal due date from the ''mailing receipt date'' of FY 1994 to the ''actual receipt date'' of FY 1995 would be unfair to potential grantees from distant or insular areas. The FYSB appreciates these concerns.

The ''mailing receipt date'' of FY 1994 was the date by which proposals had to be delivered to the U.S. Postal Service and given a date stamp. In FY 1994, agencies had only 34 days in which to prepare and submit their proposals. That is, only 34 days intervened between the publication date of the **Federal Register** solicitation and the ''mailing receipt date'' for the proposals. The FYSB considered this a minimal time for proposal preparation and submission. Those proposals that were delivered to the U.S. Postal Service on the mailing receipt date itself typically arrived in Washington, DC., for review only several days and in some cases several weeks later. These late arrivals occasioned some disruptions in the review process.

In FY 1995, approximately 60 days will intervene between the publication date of the solicitation and the actual receipt date of the proposals by HHS in Washington, DC. The FYSB considers 60 days to be fully adequate for proposal preparation, mailing, and delivery.

b. A number of respondents supported the proposal to establish a minimum grant level of $75,000 per year, while a somewhat larger number suggested that runaway and homeless youth in rural States, such as in Region VIII, miGht be deprived of services if all or almost all of a State's allocation went to just one site, leaving youth in distant sections of the State completely unserved. The FYSB will adopt the goal of increasing funding to individual sites now receiving very small awards when possible, but will not establish a minimum at this time.

c. Most respondents agreed with the proposal to establish consolidated youth services demonstration programs that combined the services of the three traditional programs: the BCP, the DAPP, and the TLP. However, the proposal in the Administration's FY 1996 budget to consolidate all of the RHY programs into a single program, along with a variety of different proposals by the Congress, suggests to FYSB that it would be preferable to postpone implementation of this demonstration effort.

To the extent feasible, ACYF addressed these and all other public comments in preparing the final priorities. The final program priorities below reflect the changes made in the proposed priorities in light of the comments received.

2. Final Program Priorities for Fiscal Year 1995

The final priorities are similar to those of earlier years in that the Department will award 90 percent or more of the funds appropriated under the BCP and approximately 90 percent of the funds appropriated under the DAPP and the TLP to grantees providing direct services to runaway and homeless youth.

The final priorities are further similar to those of earlier years in that the Department will award continuation funding to the National Communications System, to the ten Regional Training and Technical Assistance providers, and to a number of related program support activities.

The Final Program Priorities differ from those of earlier years in two major ways:

- The Family and Youth Services Bureau is adopting an approach to youth services that emphasizes comprehensive youth development over attempts to correct discrete dysfunctional behaviors of youth and their families, and
- The FYSB is adopting administrative changes designed for more efficient delivery of services and more stability among service providers.

a. Basic Center Program Grants

Approximately 340 Basic Center grants, of which about one-third will be competitive new starts and two-thirds will be non-competitive continuations, will be funded in FY 1995.

Eligible applicants for the new starts are current grantees with project periods

ending in FY 1995 and otherwise eligible applicants not holding current grants. The applications will be reviewed by State, and awards will be made during the last quarter of FY 1995 (July - September 1995).

Section 385(a)(2) of the Act requires that 90 percent of the funds appropriated under Part A (The Runaway and Homeless Youth Grant Program) be used to establish and strengthen runaway and homeless youth Basic Centers. Total funding under Part A of the Act for FY 1995 is approximately $40.5 million. This sum, which is an increase over the FY 1994 level, triggers the provision in the Act calling for a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the four insular areas: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

b. Transitional Living Program Grants

Part B, section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

In FY 1995, approximately $12.9 million is available for TLP direct service grants. Approximately $6.3 million has already been awarded as new start FY 1995 funding to applicants that were successful in the competition conducted at the end of FY 1994, and the remaining $6.6 million will be awarded as continuation funding to TLP grants awarded in FY 1994. Further, it is projected that all potential FY 1996 TLP funds will be awarded in the form of continuation grants. In consequence, no applications for new start Transitional Living Program grants will be solicited in FY 1995 for use of FY 1996 funds.

c. National Communications System

Part C, section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1994, a five-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. Non-competitive continuation funding will be awarded to the grantee in FY 1995.

d. Support Services for Runaway and Homeless Youth Programs

(1) Training and Technical Assistance

Part D, section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance (T&TA) to organizations that are eligible to receive service grants under the Act. Eligible organizations include the Basic Centers authorized under Part A of the Act (The Runaway and Homeless Youth Grant Program) and the service grantees authorized under Part B of the Act (The Transitional Living Grant Program). Section 3511 of the Anti-Drug Abuse Act of 1988, which authorizes the Drug Abuse Prevention Program for Runaway and Homeless Youth (DAPP), also authorizes support for T&TA to runaway and homeless youth service providers. The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

In FY 1994, the Family and Youth Services Bureau made ten Cooperative Agreement Awards, one in each of the ten Federal Regions, to provide T&TA to agencies funded under the three Federal programs for runaway and homeless youth (the BCP, the TLP, and the DAPP). Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Regions. Each has a five-year project period that will expire in FY 1999.

Non-competitive continuation funding will be awarded to the ten T&TA grantees in FY 1995.

(2) National Clearinghouse on Runaway and Homeless Youth

In June 1992, a five-year contract was awarded by the Department to establish and operate the National Clearinghouse on Runaway and Homeless Youth. The purpose of the Clearinghouse is to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth. To this end, the Clearinghouse:

- Collects, evaluates and maintains reports, materials and other products regarding service provision to runaway and homeless youth;
- Develops and disseminates reports and bibliographies useful to the field;
- Identifies areas in which new or additional reports, materials and products are needed; and
- Carries out other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.

Non-competitive continuation funding will be awarded to sustain the Clearinghouse in FY 1995.

(3) Runaway and Homeless Youth Management Information System (RHYMIS)

In FY 1992, a three-year contract was awarded to implement the Runaway and Homeless Youth Management Information System (RHYMIS) across three FYSB programs: The BCP, the TLP, and the DAPP. In FY 1993, using an existing computer-based, information gathering protocol, the contractor began providing training and technical assistance to these grantees in the use of the RHYMIS. The data generated by the system are used to produce reports and information regarding the programs, including information for the required reports to Congress on each of the three programs. The RHYMIS also serves as a management tool for FYSB and for the individual programs.

Non-competitive continuation funding for the RHYMIS will be an option in FY 1995.

(4) Monitoring Support for FYSB Programs

In FY 1992, FYSB began developing a comprehensive monitoring instrument and set of site visit protocols, including a peer-review component for the BCP, the TLP, and the DAPP. Pilot implementation of the instrument and related protocols began in FY 1993. Also in FY 1993 a new contract to provide logistical support for the peer review monitoring process was awarded, including nationwide distribution of the new materials. Use of the new instrument and peer review process during the first full year of operation has resulted in identification of a number of strengths and weaknesses among individual grantees. These findings have been used by the Regional T&TA providers as a basis for their activities.

Non-competitive continuation funding for the logistical contractor will be provided in FY 1995, and a new contract for the effort may be solicited in FY 1996.

e. Research and Demonstration Initiatives

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These

activities are important in order to identify emerging issues and to develop and test models which address such issues.

(1) Services for Youth in Rural Areas

Because of geographic distances, population density and, in some cases, cultural differences, it is difficult to provide effective services to runaway and homeless youth in rural areas. In many such areas, scarcity of funds and other resources precludes funding of separate, autonomous Basic Center programs. The need exists for innovative and effective models for the provision of runaway and homeless youth services in rural areas, including Indian reservations. The new models should make services accessible to youth without setting up inordinately expensive service agencies in low populated areas. In FY 1993, first-year funding was awarded to eight grants to develop such models. Non-competitive continuation funding was provided in FY 1994 and will be provided in FY 1995.

(2) Analysis, Synthesis, and Interpretation of New Information Concerning Runaway and Homeless Youth Programs

Over the past few years, considerable new knowledge and information has been developed concerning the runaway and homeless youth programs administered by FYSB, and concerning the youth and families served. The main sources of this new information are the Runaway and Homeless Youth Management Information System (RHYMIS), the results of RHY monitoring visits, and a number of evaluation studies underway or recently completed. The RHYMIS, monitoring reports, and the evaluation studies contain descriptions of FYSB's grantee agencies, along with detailed data on the youth and families served, such as demographic profiles, presenting problems, services provided, and service outcomes. There is need for analysis, synthesis, and interpretation of this new information that will be useful in development of RHY plans and policies for the Family and Youth Services Bureau.

A contract will be awarded in FY 1995 to analyze, synthesize, and develop the program and policy implications of the new information now becoming available. The study will be developed within a context of the most significant, current comprehensive theories of youth development. Proposals to conduct the study will be solicited from the eight Master Contractors for the ''Policy and Program Studies'' consortium recently established by the Administration on Children, Youth and Families.

f. Priority for a Comprehensive Youth Development Approach.

Over the past several decades, the Federal government has established many programs designed to alleviate discrete problems identified among American youth. Examples are programs for school dropout prevention, juvenile delinquency prevention, abuse and neglect prevention, adolescent pregnancy prevention, youth gang prevention, drug abuse prevention, and compensatory programs to improve the performance of minority and non-English-speaking youth in the public schools. Among these many programs are the BCP, the DAPP, and the TLP.

A shared feature of all these programs is their emphasis on undesirable behavior, with a number of negative consequences. Youth ''problems'' are commonly used to define and blame, even to punish, the youth. Further, the labeling of a youth as a drug abuser or a delinquent may lead to interventions too narrow to take into account the full array of causes leading to the abuse or delinquency, such as parental neglect, school failure, or poverty. Practicing youth workers are well aware that ''single-problem'' youth are rare, and that interventions from many different perspectives, and supports, including funding, from many different sources, are required to effectively help troubled youth.

The disjointed services that often follow from this Federal pattern of categorical funding to correct undesirable behavior (funding that targets a single problem behavior of the youth) may be avoided if interventions are viewed from a ''developmental'' perspective. A developmental perspective views adolescence and youth as the passage from the almost total dependence of the child into the independence and self-sufficiency of the young adult. The various changes, stages, and growth spurts of the passage may be considered as the youth's natural, healthy responses to the challenges and opportunities provided by functional families, peers, neighborhoods, schools and churches. The tasks of youth services providers are seen, thus, not as correcting the ''pathologies'' of troubled youth, but rather as providing for the successive ''needs'' of maturing individuals: The psychological need to develop a clear self-identity; the sociological need to resolve disagreements through talking and not through flight or fighting; the economic need to prepare for and enter into a career; and the familial needs for sharing, for trusting, for giving love and receiving love, for commitment, and for all that establishing a family entails.

This developmental approach will become central to all FYSB activities and programs over the next two years.

g. Priorities for Administrative Changes

To support the increased emphasis on youth development, a number of management or administrative changes will be implemented over the coming years:

- The Regional Offices have and will continue to play a significant role in the assessment of grant applications. This role includes Regional staff involvement (1) as chairpersons for peer review panels and (2) in conduct of administrative reviews of new start applications that take into account knowledge about the applicants' experience, effectiveness, and potential and of the geographic distribution of the grantees in their respective States and Regions. Final funding decisions will remain the responsibility of the Commissioner of the Administration on Children, Youth and Families.
- The Administration on Children and Families (ACF) will change the deadline for receipt of a Runaway and Homeless Youth grant application from the postal date of the application to the actual receipt date of the application by ACF. Applicants should carefully examine receipt dates in this announcement to assure that they meet deadlines in the manner prescribed.
- Efforts will be continued to avoid the problems of gaps in financial support between the expiration of one grant and the beginning of a new grant for current grantees that are successful in competition.
- Where possible, FYSB will attempt to increase minimum grant funding levels to amounts sufficient to support the required youth services. However, no minimum levels will be established at this time and the recommendations of Regional staff will be considered in this matter. We suggest that all applicants examine carefully the program announcements to ensure that they request sufficient funds.

F. Eligible Applicants

The various legislative Acts authorizing the runaway and homeless youth programs addressed in this **Federal Register** announcement identify ''eligible applicants'' differently. Accordingly, the definition appropriate to each individual program is found in Part III of this announcement as a part of each program area description.

Basic Center Program grantees with one or two years remaining on their current awards and the expectation of continuation funding in FY 1995 may not apply for new Basic Center grants. Drug Abuse Prevention Program grantees with one or two years remaining on their current awards and the expectation of continuation funding in FY 1995 may not apply for new Drug Abuse Prevention Program grants. All remaining eligible applicants may apply for new grants for either or both of these two programs.

Applicants may refer to Part VI, Appendix D, for a listing of current grantees that are ineligible to apply under the respective grant programs.

Any non-profit organization submitting an application must submit proof of its non-profit status with its application. Proof can include a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code, or a copy of the currently valid IRS tax-exemption certificate, or a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Availability of Competitive New-Start Funds

The Administration on Children, Youth and Families expects to award approximately 540 new and continuation grants to serve runaway and homeless youth in FY 1995. Dollar amounts to be awarded by fiscal year and program are as follows:

1. Basic Center Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award approximately $36.4 million in Basic Center Program grants in FY 1995. Of this total, approximately $21.8 million will be awarded in the form of non-competitive continuations to current grantees, and the remaining approximately $14.6 million will be available for competitive, new-start awards. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18. The FY 1995 funding level, which is an increase over the FY 1994 level, triggers the provision in the Act calling for a minimum award of $100,000 to each State, the District of Columbia, and Puerto Rico, and a minimum award of $45,000 to each of the four insular areas: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

The funds available for both continuations and new starts in each of the States and insular areas are listed in the Table of Allocations by State (Part VI, Appendix H). In this Table, the amounts shown in the column labeled ''New Starts'' are the amounts available for competition in the respective States.

Current Basic Center Program grantees having one or two years remaining in their project periods will receive instructions from their respective ACF Regional Offices on the procedures for applying for these continuation grants and should not respond to this announcement. These grantees are listed in Part VI, Appendix D.1, have project expiration dates in FY 1996 or 1997, and are not eligible to apply for new Basic Center grants.

Current Basic Center Program grantees with project periods ending by September 30, 1995, and all other eligible applicants not currently receiving Basic Center funds may apply for the new competitive grants under this announcement.

The number of new awards made within each State will depend upon the funds available (i.e., the State's total allotment less the amount required for non-competing continuations), as well as on the number of acceptable applications. Therefore, where the amount required for non-competing continuations in any State equals the State's total allotment, no new awards will be made.

All applicants under this announcement will compete with other applicants in the State in which their services would be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction, the Commissioner, ACYF, will reallocate the unused funds.

Further information on the BCP application requirements is presented in Part III, Section A, and in Part IV.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth

In FY 1995, the Administration on Children, Youth and Families expects to award approximately $4.5 million in new competitive Drug Abuse Prevention Program grants and $6.6 million in non-competing continuation DAPP awards.

Further information on the DAPP application requirements is presented in Part III, Section B, and in Part IV.

H. Duration of Projects

This announcement solicits applications for projects of up to three years duration (36-month project periods) for the BCP and the DAPP. Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

I. Maximum Federal Award and Grantee Share of the Project

The maximum amount of Federal funds for which an applicant can apply is specified in the program descriptions found in Part III of this announcement.

The legislation authorizing runaway and homeless youth programs requires that grantees provide a non-Federal match for Federal funds. In some cases, this non-Federal share is a percent of the total cost of the project and, in some cases, it is a percent of the Federal share. Specific non-Federal share requirements for each Priority Area are found in Part III of this announcement.

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded. For-profit applicants for Basic Center Program grants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

Part II. Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application under the BCP and the DAPP and should be used in developing the program narratives. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. Note that the highest possible value BCP and DAPP applications can receive is 105 points. See Criterion 4 for more specific information.

Criterion 1. Objectives and Need for Assistance (15 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project

site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant should refer to Part I, Section C, of this announcement for a description of each program's purpose.)

Criterion 2. Results or Benefits Expected (20 Points)

Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types and quantities of services to be provided. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project.

Criterion 3. Approach (35 Points)

Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, and how the project will be maintained after termination of Federal support. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4. Staff Background and Organizational Experience (20 Points)

List the organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. Applicants are encouraged to discuss staff and organizational experience in working with runaway and homeless youth populations and may include information regarding their past performance under RHYP grants. Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.

Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, BCP and DAPP applicants having three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act are eligible to receive an additional five (5) points on this criterion.

Criterion 5. Budget Appropriateness (10 Points)

Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

The Program Narrative information provided by the applicant in response to the priority area description identified in Part III of this announcement should be organized and presented according to these five evaluation criteria.

Part III. Program Areas

A. Basic Center Program for Runaway and Homeless Youth

Eligible Applicants: Any State, unit of local government, combination of units of local government, public or private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current Basic Center grants who are eligible to apply for non-competitive continuation funding in FY 1995 may not apply for competitive new Basic Center grants under this announcement. Applicants may refer to Part VI, Appendix D.1 for a listing of current grantees which are ineligible for grants under this priority area.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience establishing and operating centers that provide direct services to runaway and homeless youth in a manner that is outside the law enforcement system, the child welfare system, the mental health system and the juvenile justice system. Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act. Applications claiming credit for this preference must include a statement of no more than one page documenting the relevant experience.

Program Purpose, Goals, and Objectives: The Administration on Children, Youth and Families will award approximately 115 new service grants to establish or strengthen existing or proposed runaway and homeless youth Basic Centers. These programs must be locally controlled efforts that provide temporary shelter, counseling and related services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

Applications are solicited under this program area to provide direct services that fulfill the program purposes, goals and objectives set forth in the legislation and as specified in Part I, section C.1 of this announcement.

Background: The Runaway Youth and Homeless Youth Act of 1974 was a response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines, and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center funded under the authorizing legislation is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen days; food; clothing; individual, group, and family counseling; and related services. Many Basic Centers provide their services in residential settings with a capacity for no more than 20 youth. Some centers also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location.

Currently, approximately 60,000 youth annually receive shelter for an average of 12 nights and other ongoing services through ACYF-funded Basic Centers. The primary presenting problems of these youth include conflict with parents or other adults, including physical and sexual abuse; other family crises such as divorce, death, or sudden loss of income; and personal problems such as drug use, or problems with peers, school attendance and truancy, bad grades, inability to get along with teachers, and learning disabilities.

Low self-esteem is a major problem among this population. Half have a poor self image; somewhat less than half are depressed; and 10 percent are possibly suicidal.

After receiving ongoing services from shelter programs, approximately one half of the youth return to their families. One-third are provided alternative, but safe, long-term living arrangements. Five percent return to the streets, and 10

percent leave the centers with no known destination.

Minimum Requirements for Project Design: As part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of the proposal.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.1. of this announcement.

2. Applicant must describe the conditions of youth and families in the area to be served, with an emphasis on the incidence and characteristics of runaway and homeless youth and their families. The discussion must consider matters of family functioning, along with the health, education, employment, and social conditions of the youth, including at-risk conditions or behaviors such as drug use, school failure, and delinquency.

3. Applicant must discuss the existing support systems for at-risk youth and families in the area, with specific references to law enforcement, health and mental health care, social services, school systems, and child welfare. In addition, other agencies providing shelter and services to runaway and homeless youth in the area must be identified.

4. Within the context of the existing support systems, applicant must demonstrate the need for the center and indicate the objectives that the program would work toward fulfilling.

5. Applicant must describe the area to be served by the proposed center, and must demonstrate that the center is or will be located in an area which is frequented by and/or easily accessible by runaway and homeless youth.

Results and Benefits Expected

1. Applicant must specify the numbers of runaway and homeless youth and their families to be served, the number of beds available for runaway and homeless youth and the types and quantities of services to be provided.

2. Applicant must describe the anticipated changes in attitudes, values and behavior, and improvements in individual and family functioning that will occur as a consequence of the services provided by the center.

3. Applicant must discuss the expected impact of the project on the availability of services to runaway and homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services that address the needs of runaway and homeless youth in the community.

Approach

1. Applicant must describe how the center's youth development approach or philosophy underlies and integrates all proposed activities, including provision of services to runaway and homeless youth and involvement of the youth's parents or legal guardians.

2. Applicant must describe how runaway and homeless youth and their families will be reached, and how services will be provided in compliance with the Program Performance Standards listed in Part VI, Appendix A.

3. Applicant must include detailed plans for implementing direct services based upon a youth development approach and upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented, including innovative approaches to securing appropriate center services for the runaway and homeless youth to be served, for involving family members as an integral part of the services provided, for periodic review and assessment of individual cases, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or are street youth.

4. Applicant must describe the center's plans for conducting an outreach program that, where applicable, will attract members of ethnic and racial minorities and/or persons with limited ability to speak English.

5. Applicant must describe the center's plans and procedures for intake and assessment of the youth upon arrival at the center.

6. Applicant must describe the center's plans for contacting the parents or other relatives of the youth they serve, for ensuring the safe return of the youth to their parents, relatives or legal guardians if it is in their best interests, for contacting local governments pursuant to formal or informal arrangements established with such officials, and for providing alternative living arrangements when it is not safe or appropriate for the youth to return home.

7. Applicant must describe the type of shelter that will be available, the shelter capacity of the center and the system of staff supervision to be implemented in the shelter.

8. Applicant must describe the center's plans for ensuring proper coordination with law enforcement personnel, health and mental health care personnel, social service personnel, and welfare personnel.

9. Applicant must describe the center's plans for ensuring coordination with the schools to which runaway and homeless youth will return, and for assisting the youth to stay current with the curricula of these schools.

10. Applicant must describe the center's procedures for dealing with youth who have run from foster care placements.

11. Applicant must describe procedures for dealing with youth who have run from correctional institutions, and must show that procedures are in accordance with Federal, State and local laws.

12. Applicant must describe the center's plans and procedures for providing aftercare services and for ensuring, whenever possible, that aftercare services will also be provided to those youth who are returned beyond the State in which the center is located.

13. Applicant must agree to gather and submit program and client data required by FYSB's Runaway and Homeless Youth Management Information System (RHYMIS). If applicant is a current recipient of a BCP or DAPP grant (expiring in FY 1995), applicant must describe the extent to which he or she now gathers and submits required data to the RHYMIS.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the RHYMIS. To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, telephone: 1–800–392–2395.

14. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

15. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of the 36-month project period in the event the applicant does not receive a new award.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in establishing and operating centers that provide direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

4. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients when needed.

5. Applicant must describe how community and other support will be secured to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

Duration of Project: This announcement solicits applications for Basic Center projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Priority will be given to applicants which apply for less than $200,000 per year. The maximum Federal share for a 3-year project period is $600,000.

Applicant Share of Project Costs: Basic Center grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project requesting $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,000 (=$10,000 per budget period).

B. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP)

Eligible Applicants: Any State, unit of local government (or combination of units of local government), public or non-profit private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for DAPP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current DAPP grants with 12 or more months remaining in their project periods may not apply for new DAPP grants under this announcement. Applicants may refer to Part VI, Appendix D.2. for a listing of current grantees which are ineligible to apply for grants under this priority area. No more than one grant per legal entity (organization) will be awarded under this priority area. Organizations submitting more than one application for DAPP funds must understand that only one application will be considered for funding.

Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points in this criterion. Applications claiming credit for this preference must include a statement of no more than one page documenting the relevant experience. Empirical or applied research experience is not considered direct service.

Program Purpose, Goals and Objectives: The Administration on Children, Youth and Families will award approximately 45 new grants to support services within a community to maintain, improve and/or expand drug abuse prevention, early intervention, and reduction of drug dependency services to runaway and homeless youth and their families. Applications are solicited under this priority area to carry out direct service projects designed to address the issue of drug abuse among runaway and homeless youth in the applicant's community as required by the goals and objectives set forth in the legislation and specified in Part I, section C.2. of this announcement.

Activities that may be maintained, improved and/or expanded through a DAPP grant include but are not necessarily limited to:

1. Improving networking and service coordination to increase the availability of services to runaway and homeless youth;

2. Expanding outreach activities, particularly street-based outreach programs;

3. Providing individual, family, group, and/or peer prevention and intervention counseling related to alcohol and other drug use;

4. Strengthening intake and assessment procedures for substance abuse at runaway and homeless youth shelters;

5. Coordinating services with drug treatment facilities and making referrals to treatment that are geared to the runaway and homeless youth population;

6. Providing aftercare and follow-up services to runaway and homeless youth with substance abuse problems who have received shelter and/or non-residential services;

7. Increasing staff knowledge and skills related to working with runaway and homeless youth with substance abuse problems by improving or accessing training opportunities;

8. Improving programming to address the unique cultural needs and concerns of minority runaway and homeless youth;

9. Involving and educating parents, siblings and peers of runaway and homeless youth receiving drug abuse prevention services;

10. Developing and implementing programs designed to reduce drug involvement among the target population by improving coping skills and reducing stress factors arising from such problems as homelessness, family dysfunction, and peer pressure; and

11. Establishing linkages with community mental health programs that will provide comprehensive substance abuse counseling and/or treatment to runaway and homeless youth.

Efforts that will not be funded under this priority area include research and demonstration projects on illicit drug use by runaway and homeless youth, and the direct provision of drug treatment services such as those services provided in a medical setting or by medical personnel.

This priority area is specifically targeted to runaway and homeless youth. Potential applicants interested in providing drug abuse prevention services to high-risk youth other than those who are runaways or homeless are encouraged to contact the Center for Substance Abuse Prevention (CSAP). For information on CSAP grant programs and other drug abuse prevention resources, applicants should contact the National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345; telephone: 1–800–729–6686.

Background: Abuse of drugs has had an increasingly severe effect on runaway and homeless youth. In 1994, approximately 20 percent of youth entering the Basic Centers identified alcohol and other illicit drugs as a personal problem. Approximately the same percentage identified substance abuse by household members as a problem.

The Drug Abuse Education and Prevention Program (DAPP) provides Federal Assistance to comprehensively address the problem of drug involvement among runaway and homeless youth. Since the program's inception in 1989, ACYF has awarded approximately $90 million in discretionary grants to approximately 475 agencies and organizations located throughout the United States, including Puerto Rico and the Virgin Islands.

While varying degrees of success have been reported by DAPP grantees, many of the most promising programs have implemented one or more of the following components:

1. Candid discussions between youth and street-wise peer counselors and/or recovering youth substance abusers who can discuss addiction and recovery from their personal experience;

2. Sessions in which youth obtain accurate facts on any and all aspects of substance abuse and treatment;

3. Presentation of decision-making and self-assertiveness skills and techniques that assist youth in making independent choices and avoiding drug-involved friends and environments;

4. Counseling and/or other strategies for helping youth to understand both the underlying causes of drug use and the effect of drugs on them, their families, their peers and their communities;

5. Educational information that portrays the consequences of overdosing, the effects of drug withdrawal, and the increased chances of contracting the HIV virus and AIDS; and

6. The provision of specific and realistic information on various treatment options that are available, assistance in enrolling in such programs, and appropriate follow-up by the service provider.

Minimum Requirements for Project Design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, applicants must address the following items in the program narrative sections of their applications.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the program and how implementation will fulfill the requirements of the legislation identified in Part I, Section C.2., of this announcement.

2. Applicant must discuss the rates of illicit drug use by juveniles, specifically addressing the incidence related to runaway and homeless youth in the community(ies) to be served and the availability (or lack) of services for runaway and homeless youth in those communities.

3. Applicant must identify the extent to which the proposed projects or activities will provide services in geographic areas where similar services are unavailable or in short supply.

4. Applicant must demonstrate an understanding of the issues related to alcohol and other drug abuse among runaway and homeless youth and the provision of services to that population.

Results and Benefits Expected

1. Applicant must identify the number of runaway and homeless youth and their families to be served, the types and quantities of services to be provided and how units of service will be defined and measured.

2. Applicant must discuss how the project will enhance or increase the capacity of the applicant to provide services to address the illicit use of alcohol and other drugs by runaway and homeless youth.

3. Applicant must describe the extent to which the project will maintain, increase or improve the community's level of services and/or the coordination of services for runaway and homeless youth.

4. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

Approach

1. Applicant must describe how the project's youth development approach or philosophy underlies and integrates all proposed activities, including provision of services to runaway and homeless youth and involvement of the youth's parents or legal guardians.

2. Applicant must describe how the program will maintain, improve, and/or expand direct alcohol and other drug abuse prevention, intervention and reduction services in their community.

3. Applicant must include detailed plans for implementing direct services based upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented. These should include innovative approaches to securing appropriate drug treatment services for the runaway and homeless youth to be served, for involving family members as an integral part of services provided, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or who are street youth.

4. Applicant must identify, when appropriate, the short-term prevention and intervention strategies to be used with runaway and homeless youth in temporary emergency shelters and explain the follow-up efforts to be implemented with the youth once they leave the shelters.

5. Applicant must discuss how the proposed project will be integrated with other services to runaway and homeless youth that are provided by the applicant or that are available in the community. In addition, applicant is encouraged to show evidence of collaboration with other agencies in the development of a comprehensive approach to service

delivery for runaway and homeless youth. Applicant must identify the organizations with which it will work and describe the contributions of these organizations to the project. A letter of commitment that indicates the level of responsibility and involvement must be included for each participating agency.

6. Applicant must identify and explain how the program will provide alcohol and other drug abuse prevention services to address the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups, persons with limited ability to speak English and/or who are street youth.

7. Applicant must discuss the extent, if any, to which the project will incorporate new or innovative techniques.

8. Applicant must discuss plans for evaluating the project, including assessing the outcomes and accomplishments of the program and the service delivery models being implemented.

9. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of the program project period in the event the applicant does not receive a new award.

10. Applicant must agree to gather and submit program and client data required by FYSB's Runaway and Homeless Youth Management Information System (RHYMIS). If applicant is a current recipient of a BCP or DAPP grant (expiring in FY 1995), applicant must describe the extent to which he or she now gathers and submits required data to the RHYMIS.

While the computer software and training for the implementation of the RHYMIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the RHYMIS. To determine whether an agency's current computer equipment is adequate, or whether purchase of an upgrade or of new equipment is necessary, potential applicants are invited to contact the RHYMIS Technical Support Group at Information Technology Incorporated, Bethesda, MD, telephone: 1–800–392–2395.

11. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a brief description of current and proposed staff skills and knowledge regarding developmental needs of runaway and homeless youth, and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. (Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.)

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

Duration of Project: This announcement solicits applications for Drug Abuse Prevention Projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Up to $100,000 per year, which equals a maximum Federal share of $300,000 for a 3-year project period.

Applicant Share of Project Costs: Drug Abuse Prevention Program grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds over a three-year project period (based on an award of $100,000 per 12-month budget period) must include a match of at least $100,000 (= 25 percent of $400,000, the total approved cost of the project).

Part IV. Application Process

A. Assistance to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACF Regional Youth Contacts listed in Part VI, Appendix E, or from the Administration on Children, Youth and Families in Washington, D.C. (see address at the beginning of this announcement). Organizations may also receive information and technical assistance in preparing applications from the appropriate Training and Technical Assistance Provider grantee listed in Part VI, Appendix F.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided at the end of this announcement (see Part VI, section I of this announcement) and in accordance with the guidance provided below. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including

program announcements. This program announcement does not contain information collection requirements beyond those approved for grant applications under OMB Control Number 0348–0043.

D. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 19 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCS are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they must be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix G, of this announcement.

Availability of Forms and Other Materials

A copy of the forms required to be submitted as part of each application for a runaway and homeless youth grant, and instructions for completing the application, are provided in Part VI, Appendix I. The Basic Center Program Performance Standards as well as descriptions of the National Runaway Switchboard and the National Clearinghouse on Runaway and Homeless Youth are presented in Part VI, Appendices A, B and C. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix G.

Legislation referenced in Part I, section B, of this announcement may be found in major public libraries and at the ACF Regional Offices listed in Part VI, Appendix E, at the end of this announcement.

Additional copies of this announcement may be obtained from the ACF Regional Offices or by calling the telephone number listed at the beginning of this announcement. Further general information may be obtained from the Training and Technical Assistance Providers listed in Part VI, Appendix F.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and human service programs. Applications for Basic Center Program grants will be reviewed competitively only with other applications from the same State. Applications for Drug Abuse Prevention Program grants will be reviewed as part of a national competition.

Non-Federal experts will review the applications based on the Evaluation Criteria listed in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement, and will assign a score to each application. Both Central and Regional office staff will conduct administrative reviews of the applications and the results of the competitive reviews and will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. However, current grantees ending three-year funding periods, and applying as new applicants for funds under this program announcement, are reminded that when the current project periods end so does the funding agency's obligation for future awards. Criterion 3, Approach, requires applicants to specifically discuss how their projects will be maintained after termination of Federal support.

In addition to scores assigned by non-Federal reviewers and Regional Office Reviewers, consideration will be given to adequate geographic distribution of services, and the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect to consider applicants' past performance in providing services to runaway and homeless youth and also may elect not to fund any applicants having known management, fiscal, reporting (as under the RHYMIS), or other problems which make it unlikely that they would be able to provide effective services.

Grant awards for Basic Center Program and Drug Abuse Prevention Program Grants will be made by September 30, 1995. Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made, including grantees whose three-year project periods end in FY 1995.

Applicants applying for more than one runaway and homeless youth grant (Basic Center Program (BCP), Drug Abuse Prevention Program (DAPP))

must submit separate and complete applications for each program. BCP and DAPP applications that combine the two programs in a single proposal will not be reviewed.

Part V. Application Content, Instructions, Assembly, and Submission

A. Content, Instructions, and Assembly of Applications

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–88) (page i). Follow the instructions in Part VI, Appendix I. In Item 8 of Form 424, check ''New.'' In Item 10 of the 424, clearly identify the Catalog of Federal Domestic Assistance Program Number and Title for the program for which funds are being requested (93.623, Basic Center Program for Runaway and Homeless Youth; 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth). In Item 11 of the 424, identify the Program Area (IIIA or IIIB) and the program name [(Basic Center Program (BCP) or Drug Abuse Prevention Program (DAPP))] which the application is addressing.

2. Budget Information (Standard Form 424A, REV 4–88) (pages ii–iii). Follow the instructions in Part VI, Appendix I.

3. Budget Justification (Type on standard size plain white paper) (pages iv–v). Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88) (pages vi–vii). Certification Regarding Drug-Free and Smoke-Free Workplace, Certification Regarding Debarment, Certification Regarding Lobbying, and Certification Regarding Environmental Tobacco Smoke. Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. By signing and submitting its application each applicant is certifying its compliance with the Drug-Free and Smoke-Free Workplace and Debarment certification requirements included in this announcement.

5. Program Narrative Statement (pages 1 and following; 40 pages maximum, double-spaced). Use the Evaluation Criteria in Part II as a way to organize the Narrative. Be sure to address all the specifics contained in the appropriate Program Area Description in Part III, especially the information described under Minimum Requirements for Project Design.

The pages of the narrative statement must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least ½ inch margins. Applications which contain a program narrative statement longer than 40 double-spaced pages will not be reviewed or considered for funding. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application. It is in the best interest of the applicants to ensure that the narrative statements are easy to read, logically developed in accordance with evaluation criteria, and adhere to page limitations.

6. Organizational Capability Statement (pages OCS–1 and following; 3 pages maximum). Applicants must provide a description (no more than three pages, double-spaced) of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from juvenile justice, probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites, including addresses, phone numbers and staff contact names, if different than those on the SF 424. If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to runaway and homeless youth for programs other than that applied for in this application, show how the services supported by these funds are or will be integrated with the existing services.

7. Supporting Documents (pages SD–1 and following). The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include résumés, photocopies of newsclippings, evidence of the program's efforts to coordinate youth services at the local level, etc. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation.

The closing dates for receipt of applications for the grant programs contained in this announcement are:

Program and Closing Date

BCP, June 16, 1995
DAPP, June 30, 1995

Applications should be submitted to the following address: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20447. Attn: Maiso Bryant, ACF–95–ACYF/RHYP. (Hand delivered applications will be accepted during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday.)

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at:

Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20047

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP); Drug Abuse Prevention Program (DAPP).

Deadline. Applications will be considered as meeting the deadline if they are received on or before the RECEIPT date at the above address. *Please note that this is a departure from the traditional approach of using postmarks instead of actual receipt dates to determine eligibility of applications for review.*

Late Applications. Applications which do not meet the criteria stated above and are not received by the RECEIPT date are considered late

applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline. The ACF may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(*Catalog of Federal Domestic Assistance.* Number 93.623, Basic Center Program for Runaway and Homeless Youth; Number 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth)

Dated: April 13, 1995.

Joseph A. Mottola,

Deputy Commissioner, Administration on Children, Youth and Families.

Part VI. Appendices

Appendix A. Basic Center Program Performance Standards

Program Performance Standards

I. Purpose

The Program Performance Standards established by the Bureau for its funded centers relate to the basic program components enumerated in section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act. They address the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served.

The terms ''program performance standard,'' ''criterion,'' and ''indicators'' are used throughout both the instrument and the instructions. These terms are defined as follows:

Program Performance Standard: The general principle against which a judgment can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the Regional ACF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards are designed to serve as a developmental tool, and are to be employed by both the project staff and the Regional ACF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

II. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary

shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth should, at a minimum, include an intake form which minimally contains the basic background information needed by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional)

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under standard 13.

Appendix B. National Runaway Switchboard

The National Runaway Switchboard:

- Facilitates communication among youth, their families and youth and community-based resources through conference calling services.
- Provides crisis intervention counseling and message delivery services to at-risk youth and their families.
- Provides information and referral services to at-risk youth and their families on youth serving agencies using a computerized national resource directory.
- Conducts an annual conference for local switchboard service providers.

The Switchboard distributes information brochures, posters, a newsletter, and public service announcements. For more information, contact the National Runaway Switchboard, 3080 North Lincoln, Chicago, IL 60657.

Appendix C. National Clearinghouse on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB) established NCRHY in June 1992 in response to the need for a central source of information on runaway and homeless youth and the provision of services to that client population. As a national resource for youth service professionals, policymakers and the general public, NCRHY offers the following specific services:

Through its information line, bibliographic and FYSB program databases and special mailings, NCRHY distributes information about successful program approaches, available resources and current activities relevant to runaway and homeless youth organizations.

NCRHY develops semi-annual briefing packages to inform the field about new developments, ideas and issues related to services to runaway and homeless youth. It also produces informational packets on FYSB programs and reports on critical issues, best practices and model programs.

NCRHY facilitates FYSB-sponsored forums, bringing together experts in the field to discuss critical issues and develop strategies for addressing the causes and consequences of runaway episodes and homelessness.

NCRHY will assist FYSB in collaborating with national, State and local organizations on youth-related policy and program initiatives.

For more information, please contact the National Clearinghouse on Runaway and Homeless Youth, P.O. Box 13505, Silver Spring, Maryland 20911–3505, telephone (301) 608–8098.

Appendix D. Runaway and Homeless Youth Continuation Grantees

The following grantees are expected to receive continuation grants in FY 1995 and are NOT eligible to apply for funds under this announcement.

D.1: Basic Center Programs for Runaway and Homeless Youth Grantees Ineligible for New FY 1995 Funding

Region I

Connecticut

The Bridge Family Center, Inc., 90 North Main Street, West Hartford, CT 06107, David Johnson, (203) 521–8035

The Youth Shelter, One Salem Street, Cos Cob, CT 06830, Shari Shapiro, (203) 661–2599

Youth Continuum (Douglas House Shelter), P.O. Box 2033, New Haven, CT 06521, David Sorensen, (203) 562–3396

Maine

New Beginnings, 436 Main Street, Lewiston, ME 04240, Robert Rowe, (207) 795–4077

Massachusetts

Life Resources, 199 State St., 5th Flr., Boston, MA 02104, David Kaufer, (508) 584–0500

Concord-Assabet Family and Adolescent Services, Inc., 56 Winthrop Street, Concord, MA 01742, Stephen A. Joffe, (508) 371–3006

L.U.K. Crisis Center, Inc., 99 Day Street, Fitchburg, MA 01420, Ernest M. Pletan-Cross, (508) 345–0658

The Bridge Over Troubled Waters, 47 West Street, Boston, MA 02111, Sister Barbara Whelan, (617) 423–9575

Brookline Community Mental Health Center, 43 Garrison Road, Brookline, MA 02146, Cynthia Price, (617) 277–8107

ServiceNet, Inc., 17 New South Street, Northampton, MA 01060, James Reis, (413) 586–8680

New Hampshire

Community Youth Advocates, 88 Pleasant Street, Claremont, NH 03743, Rodney Minckler, (603) 543–0427

Rhode Island

Stopover Services of Newport County, 2538 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683–1824

Region II

New Jersey

Atlantic County Department of Social Services, 101 So. Shore Road, Northfield, NJ 08225, Don Leeds, (609) 645–5862

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fetzko, (201) 526–6605

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881–6100

Tri-County Youth Services (Project Youth Haven), 435 Main Street, Paterson, NJ 07501, Gail Manning, (201) 881–0280

Ocean's Harbor House, 2445 Windsor Avenue, Toms River, NJ 08754, Lynn Hahm, (201) 929–0660

Youth Coordinating Council, Kennedy Memorial Hospital, 2201 Chapel Avenue West, Cherry Hill, NJ 08002, Ruth Hoskins, (609) 667–6525

New York

Family and Community Services, 41 West Main Street, Cobleskill, NY 12043, Tom Meyer, (518) 234–3581

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640

Cortland County Community Action Program (Time Out Program), 23 Main Street, Cortland, NY 13045, Lenn Ann Underwood, (607) 753–6781

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Westchester County Youth Bureau, 150 Grand Street, 6th Flr., White Plains, NY 10601, Toni Collarini, (914) 285–2745

County of Nassau, One West Street, Mineola, NY 11501, Ann M. Irvin, (516) 571–5893

Dutchess County YMCA, Eastman Park, Poughkeepsie, NY 12601, Karen Pietrasanta, (914) 485–1001

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607, Frank Petrus, (716) 473–2464

Hillside Children's Center, 1183 Monroe Avenue, Rochester, NY 14620, James Cotter, (716) 473–5150

Catholic Charities of Ogdensburg, 380 Arlington Street, Watertown, NY 13601, Ann Boulter-Davis, (315) 788–4330

Society for Seamen's Children (Center for Youth and Families), 25 Hyatt Street, Staten Island, NY 10301, Ann Deinhardt, (718) 447–7740

Putnam County Youth Bureau, 110 Old Route Six Center, Carmel, NY 10512, Robert Bondi, (914) 225–6316

Family and Children's Service of Niagara, 826 Chilton Avenue, Niagara Falls, NY 14301, Gerald Kozak, (716) 693–9961

Puerto Rico

Centros Sor Isolina Ferre, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843–1910

Centro De Servicios A La Juventud, Box 9368 Cotto Station, Arecibo, PR

00613, Nidna Torres-Martinez, (809) 878–6776
The Salvation Army, 1327 Americo Miranda Avenue, Caparra Terrace, Rio Piedras, PR 00921, Nestor Nuesch, (809) 781–6883

Region III

Delaware

Aid in Dover, 838 Walker Rd., Suite 2B–1, Dover, DE 19901, Beverly Williams, (302) 734–7610

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, N.E., Washington, DC 20002, Deborah Shore, (202) 675–9340

Maryland

Walden/Sierra, Inc., St. Andrews Church Road, P.O. Box 1238, California, MD 20619, Carl Loffler, (301) 475–4464
Southern Area Youth Services, 4305 St. Barnabas Road, Temple Hills, MD 20748, Robert Jones, (301) 702–9731
Youth Resources Center, (Second Mile House), 4307 Jefferson Street, Hyattsville, MD 20781, Holger Kjeldsen, (301) 864–9735
Fellowship of Lights, Inc., 1300 North Calvert Street, Baltimore, MD 21202, Ross Pologe, (301) 837–8155
Boys & Girls Home of Maryland, Inc., 9601 Colesville Road, Silver Spring, MD 20901, Quanah Parker, (301) 589–8444

Pennsylvania

Council of Three Rivers American Indian Center, 200 Charles Street, Pittsburgh, PA 15238, Russell Simms, (412) 782–4457
Youth Services of Bucks County, Neshaminy Manor Center, Almshouse Building, Doylestown, PA 18901, Roger Dawson, (215) 257–2945
Centre County Youth Service, 410 South Fraser Street, State College, PA 16801, Norma Keller, (814) 237–5731
Valley Youth House Committee, 827–829 Linden Street, Allentown, PA 18101, David Gilgoff, (215) 691–1200
Whale's Tale, 250 Shady Avenue, Pittsburgh, PA 15206, Christopher Smith, (412) 661–1800
Family and Children's Services, 2022 Broad Avenue, Altoona, PA 16601, Jackie Sutton, (814) 944–3583
Youth Services, Inc., 410 N. 34th Street, Philadelphia, PA 19104, Laurien D. Ward, (215) 222–3262

Virginia

Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Kathy Jeffries, (804) 498–4673
Children, Youth and Family Services, 116 West Jefferson Street, Charlottesville, VA 22902, Cathy Bodkin, (804) 296–4118
Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard J. Lung, (804) 282–4255
Loudoun County Youth Shelter, 16450 Meadowview Court, Leesburg, VA 22075, Jerry Tracy, (703) 771–5300
Alternative House, 2136–G Gallows Road, Dunn Loring, VA 22027, Jim Warwick, (703) 698–7062
The Campagna Center (This Way House), 418 South Washington Street, Alexandria, VA 22314, Katherine L. Morrison, (703) 549–0111

Region IV

Alabama

Group Homes, Inc., 1426 S. Court Street, Montgomery, AL 36104, George Hoyt/Martha Nachman, (334) 262–2953
Family Connection, Inc., P.O. Box 1261, Alabaster, AL 35007, Susan Johnston, (205) 663–6301
Marshall County Attention Home, P.O. Box 952, Guntersville, AL 35976, Ramona Collins, (205) 582–0377

Florida

Crosswinds Youth Services, P.O. Box 540625, Merritt Island, FL 32954–0625, Jan Lokay, (305) 452–8988
Family Resources, Inc. (Youth & Family Connection), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 893–1150
Lutheran Ministries (Gulf Coast Youth and, Family Services), 4610 W. Fairfield Drive, Pensacola, FL 32506, Neil Pape, (904) 453–2772
Switchboard of Miami (Family P.A.C.T.), 75 SW. 8th Street, Miami, FL 33130, Shirley Aron, (305) 358–1640
Corner Drugstore (Interface), 1300 Northwest 6th Street, Gainesville, FL 32601, Karen Crapo, (904) 334–3800
Miami Bridge, Inc., 2810 NW. South River Drive, Miami, FL 33125, Chilton Harper, (305) 635–8953
Lutheran Ministries (Lippman Family Center), 221 Northwest 43rd Court, Oakland Park, FL 33309, Donald Carey, (305) 568–2801
YMCA Youth and Family Services, 41 N. School Avenue, Sarasota, FL 34237, Jack Greer, (813) 955–5596
Anchorage Children's Home (Hidle House), 707 MLK, Jr. Blvd., Panama City, FL 32401, Barbara Cloud, (904) 763–7102
Orange County Department of Human Services, 1718 East Michigan Avenue, Orlando, FL 32806, Mike Robenson, (407) 836–7675
Lutheran Ministries (Gulf Coast/Currie House), 3507 Frontage Road, Tampa, FL 33607–1776, Richard Eissfeldt, (813) 288–9550

Georgia

The Alcove, 507 East Church Street, Monroe, GA 30655, Gail Bayes, (404) 267–9156
Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313, Rita Campbell, (912) 368–9200
Safe Harbor Children's Shelter, P.O. Box 1313, Brunswick, GA 31521, Kate Minnock, (912) 267–6000
Open Arms (The Bridge), P.O. Box 71562, Albany, GA 31708, April Lott, (912) 432–3378
Children's Emergency Shelter, 127 West Church Street, Cartersville, GA 30120, Teresa Ramey, (404) 387–1143
Greenbriar Children's Center, 3709 Hopkins Street, Savannah, GA 31405, Yvette Johnson-Hagins, (912) 234–3431

Kentucky

YMCA Center for Youth Alternatives, 1410 South First Street, Louisville, KY 40208, Kevin Connelly, (502) 635–5233
Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507, Pam Miller, (606) 252–3126

Mississippi

Catholic Charities, P.O. Box 2248, Jackson, MS 39225–2248, Linda Raff, (601) 355–8634
Mississippi Children's Home Society, P.O. Box 1078, Jackson, MS 39215, Christopher Cherney, (601) 352–7784
Mississippi Children's Home Society, (Warren County Children's Shelter), P.O. Box 1078, Jackson, MS 39215, Christopher Cherney, (601) 352–7784

North Carolina

Youth Focus, Inc., 301 E. Washington St., Ste. 202, Greensboro, NC 27401, Charles Hodierne, (910) 333–6858
Lee County Youth Services, P.O. Box 57, Sanford, NC 27331–0057, Todd Edwards, (919) 774–9515
Haven House, 401 E. Whitaker Mill Road, Raleigh, NC 27608, Michael Rieder, (919) 856–6368
Catholic Social Services, P.O. Box 10962, Winston Salem, NC 27108, David Harold, (910) 727–0705
Buncombe Shelter, Inc. (Trinity Place), 12 Ravenscroft Drive, Asheville, NC 28801, Dean Vick, (704) 253–7233

South Carolina

Dept. of Youth Services (Crossroads), 4360 Headquarters Road, N. Charleston, SC 29405, Greg Leighton, (803) 744–3381
Dept. of Youth Services (Hope House), 1940 Shivers Road, Columbia, SC

29210, Marilyn McEachern, (803) 731–1694
Dept. of Youth Services (Greenhouse), 529 N. Wise Drive, Sumter, SC 29150, Howard McFadden, (803) 775–3311

Tennessee

Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37917, Charlie Gentry, (615) 524–7483
Gardner House, 317 Oak Street, Chattanooga, TN 37403, Tom Edwards, (615) 755–2725
The Family Link, P.O. Box 40437, Memphis, TN 38174–0437, Marian Carruth, (901) 725–7270

Region V

Illinois

Youth Outreach Services, 6417 W. Irving Park Road, Chicago, IL 60634, William Southwick, (312) 777–7112
Teen Living Programs (Foundation House), 3179 N. Broadway, Chicago, IL 60657, Deborah Hinde, (312) 883–0025
The Harbour, 1480 Renaissance Drive, Park Ridge, IL 60068, Mary Eichling, (708) 297–8540
LaSalle County Youth Service Bureau, 424 West Madison Street, Ottowa, IL 61350, Dave McClure, (815) 433–3953
Project OZ, 502 South Morris Avenue, Bloomington, IL 61701, Peter Rankaitis, (309) 827–0377
Aunt Martha's, 4343 Lincoln Highway, Matteson, IL 60443, Daniel Strick, (708) 747–2701
Travelers and Immigrants Aid, 208 S. LaSalle, Suite 1818, Chicago, IL 60604, Sid Mohn, (312) 528–7767

Indiana

Youth Service Bureau of St. Joseph County, 2222 Lincoln Way West, South Bend, IN 46628, Bonnie Strycker, (219) 235–9231
Stopover, Inc., 2236 E. 10th Street, Indianapolis, IN 46201–2099, Elizabeth Malone, (317) 635–9301
Clark County Youth Shelter, 118 East Chestnut Street, P.O. Box 886, Jeffersonville, IN 47131, Candice Chaney, (812) 284–5229
Monroe County Youth Service Bureau, 1310 East Atwater Avenue, Bloomington, IN 47401, Tim Tilton, (812) 333–3506
Crisis Center, Inc. (Alternative House), 101 N. Montgomery Street, Gary, IN 46403, Shirley Caylor, (219) 938–7070

Michigan

Comprehensive Youth Services (The Harbor), 3061 Commerce Drive, Suite 2, Port Huron, MI 48060, Sally Currie, (313) 385–7010
Cory Place, 1218 Washington Avenue, Bay City, MI 48708, Raul Gonzales, (517) 895–5563
Saginaw County Youth Council, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175
Northeast Michigan Community, Service Agency, 2373 Gordon Road, Alpena, MI 49707, John Swise, (517) 356–3474
League of Catholic Women (Off The Streets), 10612 E. Jefferson, Detroit, MI 48201, David Suttner, (313) 831–1000
Advisory Centers (The Bridge), 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001
Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Paul Wood, (313) 662–2265
Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493
Bethany Christian Services, 6995 W. 48th Street, Fremont, MI 49412, Dale A Painter, (616) 924–3390
Catholic Family Services, 1819 Gull Road, Kalamazoo, MI 49001, Frances Denny, (616) 381–9800
The Sanctuary, 132 Franklin Boulevard, Pontiac, MI 48341, Meri Pohutsky, (313) 547–2260
Genesee County Youth Corporation, 914 Church Street, Flint, MI 48502, Jo Davis, (313) 233–8700
Gateway Community Services (Higher Ground), 910 Abbott Road, Suite 100, East Lansing, MI 48823, Donna Spence, (517) 351–4000

Minnesota

Evergreen House, 622 Mississippi Avenue, Bemidji, MN 56601, Cheryl Byers, (218) 751–4332
Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, John Whitecloud, (612) 227–4184
Lutheran Social Services (Bethany Crisis Center), 9239 Odaho Street, Duluth, MN 55808, John Moline, (218) 626–2726
Minneapolis Youth Diversion Program (Project Offstreets), 1905 Third Avenue South, Minneapolis, MN 55404, Jeremy Lane, (614) 871–3613
Mountain Plains Youth Services (Youthworks), 715 11th Street North, Moorhead, MN 56560, Doug Herzog, (218) 233–7990

Ohio

Children's and Family Service, 535 Marmion Avenue, Youngstown, OH 44502, Gerald Janosik, (216) 782–5664
Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548–8002
Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, John Ollerton, (216) 323–3400
Daybreak, Inc., 50 Theobald Court, Dayton, OH 45410, Kipra Heermann, (513) 461–1000
Free Medical Clinic of Greater Cleveland (Safe Space Station), 12201 Euclid Avenue, Cleveland, OH 44106, W. Martin Hiller, (216) 721–4010
Lighthouse Youth Services, 1527 Madison Road, Cincinnati, OH 45206, Robert Mecum, (513) 221–3350
Lutheran Metropolitan Ministries, Inc., 1468 West 25th Street, Cleveland, OH 44113, Thomas Sutton, (216) 241–4791
Specialized Alternatives for Families and Youth, 10100 Elida Road, Delphos, OH 45833, Bruce Maag, (419) 695–8010
Connecting Point, 525 Hamil Road, #302B, Toledo, OH 43602, Juania Price, (419) 243–6326

Wisconsin

Innovative Youth Services, 1030 Washington Avenue, Racine, WI 53403, Burt Kintzler, (414) 632–0424
Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, Wisconsin 53704, Patricia Balke, (608) 241–2649
Walker's Point Youth and Family Center, 2030 W. National Avenue, Milwaukee, WI 53204, Andre Olton, (414) 672–5300

Region VI

Arkansas

Centers for Youth and Families (Stepping Stone), 6501 W. 12th Street, Little Rock, AR 72204, Richard Hill/Janie Isom, (501) 666–9066
Consolidated Youth Services, 4220 Stadium Boulevard, Jonesboro, AR 72401, Cecil Province, Jr./Bonnie Smith, (501) 972–1110

Louisiana

Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345–1171
ETC Harbour House, P.O. Box 864, Lake Charles, LA 70602, Martha Parnell, (318) 433–1062
Father Flanagan's Boys' Home, New Orleans, LA 68010, Fr. Val J. Peter, (402) 498–1000
Our House, Inc., P.O. Box 7496, Monroe, LA 71211, Carol Christopher, (318) 387–2186

New Mexico

Youth Development, 1710 Centro Familiar SW., Albuquerque, NM 87105, Augustine C. Baca, (505) 873–1604
Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504, Vic Vandegriff/Cynthia Gonzales, (505) 983–0586

Oklahoma

Youth Services of Oklahoma County, 201 NE. 50th Street, Oklahoma City,

OK 73105, Ken Young, (405) 235–7537
Payne County Youth Services, 2224 W. 12th, Stillwater, OK 74076, John Bracken, (405) 377–3380
Northwest Family Services, Inc., 628 Flynn, Alva, OK 73717, John R. Jones, (405) 327–2900

Texas

El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565–8361
YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Kathy Rod, (214) 954–0655
The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Cindy Honey, (817) 332–8317
Central Texas Youth Services Bureau, 703 Parmer Street, P.O. Box 185, Killeen, TX 76540, Keith Wallace, (817) 634–2085
The Children's Center, 2127 Avenue M, Galveston, TX 77550, Terry Keel, (409) 765–5212
Harris County Children's Protective Services (Chimney Rock Center), 6425 Chimney Rock Road, Houston, TX 77081, Ann Hibbert, (713) 664–5701
Promise House, 236 W. Page Street, Dallas, TX 75208, Lynn Stallings, (214) 941–8578
Grayson County Juvenile Alternatives, P.O. Box 1625, Sherman, TX 75091, Pam Johnson, (903) 893–4717
Father Flanagan's Boys' Home, San Antonio, TX 78204, Marcel Lue, (210) 271–3131
Middle Earth Youth Options, 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639
Sand Dollar, 527 Spring Drive, Pasadena, TX 77504, Happy Spillar, (713) 946–3030
Montgomery County Youth Services, P.O. Box 1316, Conroe, TX 77305, Gretchen Faulkner, (409) 756–8682
Collin Intervention to Youth, 902 - 16th Street, Plano, TX 75074, Julianne Bulau, (214) 423–7057
Sabine Valley MHMR Center, P.O. Box 6800, Longview, TX 75608, Mark Blackwell, (903) 753–9744
Catholic Family Services, P.O. Box 15127, Amarillo, TX 79105, Al Bednorz, (806) 376–7731

Region VII

Iowa

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518
Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170
Youth Emergency Services, 921 Pleasant Street, Des Moines, IA 50309, Susan Gehring-Liker, (515) 243–7825
Christian Home Association, North 6th Street & Avenue E, P.O. Box 8–C, Council Bluffs, IA 51502, Richard Christie, (712) 322–3700

Kansas

United Methodist Youthville, 900 W. Broadway, Newton, KS 67114, Stacy Pfeiffer, (316) 823–5529
Temporary Lodging for Children, 333 E. Poplar, Olathe, KS 66061, Sherrie Love, (913) 764–2887
Wichita Children's Home, 810 N. Holyoke, Wichita, KS 67208, Sarah Robinson, (316) 684–6581

Missouri

Synergy House, P.O. Box 12181, Parkville, MO 64152, Carol Kuhns, (816) 741–1477
Youth in Need, 516 Jefferson, St. Charles, MO 63301, Leo Tigue, (314) 946–0101
Youth Emergency Service, P.O. Box 24260, St. Louis, MO 63130, Edith Tate, (314) 862–1334
reStart, Inc., 918 East 9th Street, Kansas City, MO 64106, Olivia Dorsey, (314) 874–8686

Nebraska

Youth Emergency Services, 3001 Douglas Twin Towers, Omaha, NE 68131, Robert Sparby, (402) 345–5187
Panhandle Community Services, 3350 North 10th Street, Gering, NE 69341, Ruth Vance, (308) 635–3089
Father Flanagan's Boys' Home, 14100 Crawford Street, Boys Town, NE 68010, Father Val J. Peter, (402) 498–3323

Region VIII

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Jon Schwartz, (303) 863–7325
Pueblo Youth Service Bureau, 425 West Third Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161
CHINS UP Youth and Family Services, 17 North Farragut Avenue, Colorado Springs, CO 80909, Gerar H. Veneman, (719) 475–0562
Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Linda Sinton, (303) 297–0408
Attention, Inc., P.O. Box 907, Boulder, CO 80306, Pat Whirl-Lasarte, (303) 447–1206
Family Tree, Inc., (Gemini House), 3805 Marshall Street, Wheatridge, CO 80033, Tracy Kraft-Tharp, (303) 235–0630
Garfield Youth Services, 902 Taughenbaugh Blvd., Rifle, CO 81650, Dennis Steffan, (303) 625–3141
Comitis Crisis Center, P.O. Box 913, Aurora, CO 80010, Richard Barnhill, (303) 341–9160

South Dakota

Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Rose Chasing Hawk, (605) 747–2258
Crow Creek Sioux Tribe (Red Horse Lodge), P.O. Box 49, Ft. Thompson, SD 57339, Durine Chase, (605) 245–2410

Utah

Department of Human Services, 150 W. North Temple, Box 45550, Salt Lake City, UT 84103, Joe Leiker, (801) 538–4090

Region IX

Arizona

Children's Village of Yuma, 257 South Third Avenue, Yuma, AZ 85364, Judy Smith, (602) 783–2427
Center for Youth Resources (Tumbleweed), 915 N. Fifth Street, Phoenix, AZ 85004, Janet Garcia, (602) 271–9904
Colorado River Region Youth Service, P.O. Box 7176, Mohave Valley, AZ 86440, Richard Steinberg, (602) 768–1500
Open-Inn, 4810 E. Broadway, Tucson, AZ 85711, Darlene Dankowski, (602) 323–0200

California

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526–1440
Community Human Services, P.O. Box 3076, Monterey, CA 93942, Allison Olsen, (408) 373–3641
Youth and Family Assistance, 609 Price Avenue, #205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401
Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830
1736 Family Crisis Center, 103 W. Torrance Boulevard, Redondo Beach, CA 90277, Carol A. Adelkoff, (310) 372–4674
Butte County Department of Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Ron Erickson, (916) 891–2850
Fred Finch Youth Center, 3800 Coolidge Avenue, Oakland, CA 94602, John F. Steinfirst, (510) 482–2244
Youth Advocates (Huckleberry House), 3310 Geary Boulevard, San Francisco, CA 94118, Bruce Fisher, (415) 668–2622
Los Angeles Youth Network, 1550 Gower Street, Los Angeles, CA 90028, Elizabeth Gomez, (213) 957–7340
The Salvation Army, 900 West 9th Street, Los Angeles, CA 90015, George Church, (213) 627–0725
Catholic Charities/Angel's Flight, 1400 W. 9th Street, P.O. Box 15095, Los

Angeles, CA 90015, Rev. Gregory Cox, (213) 413–2311

Santa Clara Social Advocates for Youth, 1072 Saratoga-Sunnyvale Rd., San Jose, CA 95129, Kathleen Lynch, (408) 253–3540

Klein Bottle, 412 East Tunnel Street, Santa Maria, CA 93454, David Edelman, (805) 922–0468

Social Advocates for Youth (Individuals Now), 1303 College Avenue, Santa Rosa, CA 95404, Ed Patterson, (707) 544–3299

San Diego Youth and Community Services, 3255 Wing Street, Ste. 550, San Diego, CA 92110, Liz Shear, (619) 221–8600

Yolo Community Care Continuum, (Runaway Alternatives Program), 523 G Street, Davis, CA 95616, Henry Kloczkowski, (916) 758–2160

Operation Safehouse, Inc., 9685 Hayes Street, Riverside, CA 92503, Kathy McAdara, (909) 242–1518

Fresno County Economic Opportunities Commission, 1920 Mariposa Mall, Fresno, CA 93721, Roger Palomino, (209) 263–1012

Center for Human Rights and Constitutional Law, 256 S. Occidental Boulevard, Los Angeles, CA 90057, Peter Schey, (213) 388–8693

Options House of Hollywood, 1754 Taft Avenue, Hollywood, CA 90028, Leslie Forbes, (213) 467–1932

Redwood Community Action Agency, 904 G Street, Eureka, CA 95501, Lloyd Throne, (707) 443–8322

Community Service Programs, 16842 Von Karman Avenue, Irvine, CA 92714, Margot Carlson, (714) 250–0488

Hawaii

Hawaii Youth Services Network, 2146 Damon Street, Honolulu, HI 96822, Sam Cox, (808) 946–3635

Nevada

WestCare, 401 S. Martin Luther King, Las Vegas, NV 89106, Richard Steinberg, (702) 385–2020

Guam

Sanctuary, P.O. Box 21030, Guam Main Facility, Guam, CM 96921, Tony Champaco, (671) 734–2661

CNMI

Commonwealth of the Marianas, Department of Community, Cultural Affairs, Saipan, CM 96950, Margarita Olopai-Taitano, (670) 322–9366

American Samoa, Dept. of Human Resources, Social Services Division, Pago Pago, American Samoa, Faimafilioalii Taamu, (684) 633–2696

Palau

Palau Community Action Agency, P.O. Box 3000 Koror, Republic of Palau 96940, Doroteo Nagata, Phone: 4882–469 (Operator Assistance Needed)

Region X

Alaska

Juneau Youth Services, P.O. Box 32839, Juneau, AK 99803, Betty Jo Engelman, (907) 789–7610

Oregon

Northwest Human Services, 681 Center, N.E., Salem, OR 97301, Sandy Alexander, (503) 588–5825

J Bar J Ranch, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409

Janus Youth Programs, 738 NE Davis Street, Portland, OR 97232, Dennis Morrow, (503) 233–6090

Looking Glass, 72–B Centennial Loop, Eugene, OR 97401, James Forbes, (503) 689–2688

Washington

Youth Help Association, W. 522 Riverside, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226

Community Youth Services, 824 Fifth Avenue, SE., Olympia, WA 98501, Charles Shelan, (206) 943–0780

Auburn Youth Resources, 816 F Street, SE., Auburn, WA 98002, Richard Brugger, (206) 939–2202

Friends of Youth, 16225 NE 87th Street, Redmond, WA 98052, Howard Finck, (206) 869–6490

Northwest Youth Services, P.O. Box 5447, Bellingham, WA 98227, Michael Tyers, (206) 734–9862

Washington State Migrant Council, 301 North 1st Street, Sunnyside, WA 98944, Carlos Diaz, (509) 839–9762

United Indians of All Tribes, P.O. Box 99100, Seattle, WA 98199, Bernie Whitebear, (206) 285–4425

D.2: Drug Abuse Prevention Programs for Runaway and Homeless Youth

Grantees Ineligible for New FY 1995 Funding

Region I

Connecticut

Youth Continuum (Douglas House Shelter), P.O. Box 2033, New Haven, CT 06521, David Sorensen, (203) 562–3396

Massachusetts

Brookline Community Mental Health Center, 43 Garrison Road, Brookline, MA 02146, Cynthia Price, (617) 277–8107

Franklin County DIAL/ SELF, Inc., 196 Federal Street, Greenfield, MA 01301, Ryan Murphy, (413) 774–7054

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Gail Starr, (603) 558–1920

Rhode Island

Stopover Services of Newport County, 2538 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683–1824

Vermont

Washington County Youth Service Bureau, PO. Box 627, Montpelier, VT 05753, Tom Howard, (802) 229–9151

Region II

New Jersey

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

Crossroads, 770 Woodlane Road, Suite 57, Mt. Holly, NJ 08060, Delores G. Martell, (609) 261–5400

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fetzko, (201) 526–6605

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881–6100

New York

Equinox, 306 Central Avenue, Albany, NY 12206, Mary Seeley, (518)434–4502

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Metropolitan Assistance (Streetwork Project), 2 Lafayette Street, New York, NY 10007, Helene Lauffer, (212) 577–3806

Greenwich Village Youth Council, 37 Carmine Street, Box 208, New York, NY 10014, John Pettinato, (212) 242–3887

Puerto Rico

Centro De Servicios A La Juventud, Box 9368 Cotto Station, Arecibo, PR 00613, Nidna Torres-Martinez, (809) 878–6776

Region III

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, N.E., Washington, DC 20002, Deborah Shore, (202) 675–9340

Pennsylvania

Catholic Social Services, 33 E. Northhampton, Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215

Valley Youth House Committee, 827–829 Linden Street, Allentown, PA 18101, David Gilgoff, (215) 691–1200

Virginia

Alternative House, 2136–G Gallows Road, Dunn Loring, VA 22027, Jim Warwick, (703) 698–7062

Region IV

Florida

Youth Crisis Center, 7007 Beach Boulevard, Jacksonville, FL 32216, Tom Patania, (904) 720–0002

Switchboard of Miami (Family P.A.C.T.), 75 SW. 8th Street, Miami, FL 33130, Shirley Aron, (305) 358–1640

Georgia

The Alcove, 507 East Church Street, Monroe, GA 30655, Gail Bayes, (404) 267–9156

The Bridge, 1559 Johnson Road, NW., Atlanta, GA 30318, Ann Starr, (404) 792–0070

Kentucky

Brighton Center, Inc., P.O. Box 325, Newport, KY 41072, Robert Brewster, (606) 491–8303

Tennessee

The Family Link, P.O. Box 40437, Memphis, TN 38174–0437, Marian Carruth, (901) 725–7270

Region V

Illinois

Teen Living Programs (Foundation House), 3179 N. Broadway, Chicago, IL 60657, Deborah Hinde, (312) 883–0025

Indiana

Park Center, Inc. (Daybreak), 2722 Fairfield Avenue, Fort Wayne, IN 46807, Kim Butcher, (219) 481–2700

Michigan

Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Nancy Berendsen, (616) 983–6351

The Sanctuary, 132 Franklin Boulevard, Pontiac, MI 48341, Meri Pohutsky, (313) 547–2260

Juvenile Diversion Program, 301 Francis Street, Jackson, MI 49201, Barbara Turan, (517) 788–4240

Minnesota

Evergreen House, 622 Mississippi Avenue, Bemidji, MN 56601, Cheryl Byers, (218) 751–4332

Ohio

Daybreak, Inc., 50 Theobald Court, Dayton, OH 45410, Kipra Heermann, (513) 461–1000

Free Medical Clinic of Greater Cleveland (Safe Space Station), 12201 Euclid Avenue, Cleveland, OH 44106, W. Martin Hiller, (216) 721–4010

Lighthouse Youth Services, 1527 Madison Road, Cincinnati, OH 45206, Robert Mecum, (513) 221–3350

Wisconsin

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–6211

Counseling Center of Milwaukee (Pathfinders), 2038 N. Bartlett, Milwaukee, WI 53202, Ted Seaver, (414) 271–2565

Innovative Youth Services, 1030 Washington Avenue, Racine, WI 53403, Burt Kintzler, (414) 632–0424

Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, Wisconsin 53704, Patricia Balke, (608) 241–2649

Region VI

Louisiana

ETC Harbour House, P.O. Box 864, Lake Charles, LA 70602, Martha Parnell, (318) 433–1062

New Mexico

A New Day, 2720–A Carlislen N.E., Albuquerque, NM 87110, Jeffrey Burrows, (505) 881–5228

Oklahoma

Youth Services of Tulsa, 302 South Cheyenne, Room 114, Tulsa, OK 74103, Sharon Terry, (918) 582–0061

Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jan Webber, (405) 233–7220

Texas

Institute for Child and Family Services, 100 Sandman, Houston, TX 77007, Jane Harding, (713) 863–7850

The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Cindy Honey, (817) 332–8317

Promise House, 236 W. Page Street, Dallas, TX 75208, Lynn Stallings, (214) 941–8578

Middle Earth Youth Options, 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639

Region VII

Iowa

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518

Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170

Kansas

Kaw Valley Center, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294

Missouri

Youth in Need, 516 Jefferson, St. Charles, MO 63301, Leo Tigue, (314) 946–0101

Nebraska

Youth Service System, 770 N. Cotner Blvd., #410, Lincoln, NE 68505, James Blue, (402) 466–6181

Region VIII

Colorado

Pueblo Youth Service Bureau, 425 West Third Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161

South Dakota

Mountain Plains Youth Services (Turning Point), P.O. Box 89306, Sioux Falls, SD 57105, Linda Wood, (605) 334–1414

Region IX

Arizona

Center for Youth Resources (Tumbleweed), 915 N. Fifth Street, Phoenix, AZ 85004, Janet Garcia, (602) 271–9904

California

Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984–5955

Mendocino County Youth Project, 202 S. State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526–1440

Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830

Youth Advocates (Huckleberry House), 3310 Geary Boulevard, San Francisco, CA 94118, Bruce Fisher, (415) 668–2622

Los Angeles Youth Network, 1550 Gower Street, Los Angeles, CA 90028, Elizabeth Gomez, (213) 957–7340

Santa Clara Social Advocates for Youth, 1072 Saratoga-Sunnyvale Rd., San Jose, CA 95129, Kathleen Lynch, (408) 253–3540

San Diego Youth and Community Services, 3255 Wing Street, Ste. 550, San Diego, CA 92110, Liz Shear, (619) 221–8600

Redwood Community Action Agency, 904 G Street, Eureka, CA 95501, Lloyd Throne, (707) 443–8322

Community Service Programs, 16842 Von Karman Avenue, Irvine, CA 92714, Margot Carlson, (714) 250–0488

Los Angeles Free Clinic, 8405 Beverly Boulevard, Los Angeles, CA 90049, Mary Rainwater, (213) 653–8622

Nevada

WestCare, 401 S. Martin Luther King, Las Vegas, NV 89106, Richard Steinberg, (702) 385–2020

Region X

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452–6201

Washington

United Indians of All Tribes, P.O. Box 99100, Seattle, WA 98199, Bernie Whitebear, (206) 285–4425

Tacoma Housing Authority, 1728 East 44th Street, Tacoma, WA 98404, Patricia Harrington, (206) 473–2331

Appendix E. Administration for Children and Families Regional Office Youth Contacts

Region I: Paul Kelley, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–1138

Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–1329

Region III: Dave Lyon, Administration for Children and Families, 3535 Market Street, P.O. Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–4139

Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 331–7210

Region V: Katie Williams, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353–4241

Region VI: Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–8850

Region VII: Lynda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401

Region VIII: Vicki Wright, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3100, Ext. 361

Region IX: Al Brown, Administration for Children and Families, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556–6153

Region X: Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 615–2558, Ext. 3075

Appendix F. Training and Technical Assistance Providers

FYSB funds ten regionally based organizations to provide training and technical assistance to programs funded under the Basic Center, Transitional Living and Drug Abuse Prevention Programs, and to other agencies serving runaway and homeless youth.

Each of the training and technical assistance providers offers on-site consultations; regional, State and local conferences; information sharing and skill-based training.

For more information, contact the training and technical assistance provider in your region.

New England Consortium for Families and Youth, 25 Stow Road, Boxborough, MA 01719, (508) 266–1998, Contact: Nancy Jackson

Empire State Coalition, 121 Avenue of the Americas, New York, NY 10013, (212) 966–6477, Contact: Margo Hirsch

Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Pittsburgh, PA 15237, (412) 366–6562, Contact: Nancy Johnson

Southeastern Network of Youth and Family Services, 337 South Milledge Avenue, Athens, GA 30605, (706) 354–4568, Contact: Gail Kurtz,

Youth Network Council, 506 S. Wabash, Chicago, IL 60605, (312) 427–2710, Contact: Denis Murstein

Southwest Network of Youth Services, 2525 Wallingwood Drive, Austin, TX 78746, (512) 328–6860, Contact: Theresa Andreas-Tod

M.I.N.K., A Network of Runaway and Youth Serving Agencies, c/o Youth in Need, 516 Jefferson Street, St. Charles, MO 633014152, (314) 946–0101, Contact: Laura Harrison

Mountain Plains Youth Services, 221 West Rosser, Bismarck, ND 58501, (701) 255–7229, Contact: Linda Wood

Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, (707) 763–2213, Contact: Nancy Fastenau

Northwest Network of Runaway and Youth Services, 603 Steward Street, Seattle, WA 98101, (206) 628–3760, Contact: Carmen Ray

Appendix G. Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix Arizona 85012, Telephone (602) 280–1315

Arkansas

Ms. Tracie L. Copeland Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Mrs. Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Mr. Rodney T. Hallman, State Single Point of Contact, Office of Grants Mgmt and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Room 534A, Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Mr. Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Ms. Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa

Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Mr. Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490

Massachusetts

Ms. Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Mr. Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 949–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, ATTN: Mr. Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Mr. Gregory W. Adkins, Acting Director, Division of Community Resources, New Jersey Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Mr. George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Sante Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Mr. Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgees, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Ms. Carolyn Wright, ,Room 116 State Capitol, Salt Lake City, Utah 84114 Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations Office, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Ms. Sheryl Jeffries, State Single Point of Contact, Herachler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose E. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Ms. Linda Clarke, Telephone (809) 774–0750.

Appendix H—Basic Center Program for Runaway and Homeless Youth

TABLE OF ALLOCATIONS BY STATE, FISCAL YEAR 1995

Regions and States	Continuations plus Gap Funding	New starts	Total
Region I:			
Connecticut	$232,385	$177,082	$409,467
Maine	56,918	105,284	162,202
Massachusetts	586,883	149,101	735,984
New Hampshire	35,113	114,408	149,521
Rhode Island	112,123	12,038	124,161
Vermont	6,250	93,750	100,000
Region II:			
New Jersey	665,146	336,595	1,001,741
New York	1,291,982	1,068,661	2,360,643
Puerto Rico	441,544	168,165	609,709
Virgin Islands	0	45,000	45,000
Region III:			
Delaware	37,857	62,143	100,000
District of Columbia	46,200	53,800	100,000
Maryland	518,336	137,339	655,675
Pennsylvania	881,901	635,504	1,517,405
Virginia	560,835	278,176	839,011
West Virginia	34,513	194,788	229,301
Region IV:			
Alabama	372,050	196,977	569,027
Florida	934,325	739,999	1,674,324
Georgia	565,308	407,374	972,682
Kentucky	322,904	190,118	513,022
Mississippi	366,105	34,380	400,485
North Carolina	544,167	356,132	900,299
South Carolina	362,187	140,797	502,984
Tennessee	357,591	312,878	670,469
Region V:			
Illinois	703,233	917,728	1,620,961
Indiana	503,830	272,308	776,138
Michigan	897,778	426,253	1,324,031
Minnesota	343,916	304,891	648,807
Ohio	968,787	541,750	1,510,537
Wisconsin	379,654	329,384	709,038
Region VI:			
Arkansas	188,369	147,130	335,499
Louisiana	503,341	153,391	656,732
New Mexico	165,983	88,151	254,134
Oklahoma	176,016	283,115	459,131
Texas	1,638,809	1,099,600	2,738,409
Region VII:			
Iowa	286,866	100,939	387,805
Kansas	200,325	161,063	361,388
Missouri	532,473	187,660	720,133
Nebraska	153,836	78,107	231,943
Region VIII:			
Colorado	352,034	143,553	495,587
Montana	14,022	108,554	122,576
North Dakota	13,663	86,337	100,000
South Dakota	47,753	62,143	109,896
Utah	304,690	46,659	351,349
Wyoming	12,500	87,500	100,000
Region IX:			
American Samoa	30,000	15,000	45,000
Arizona	405,687	159,642	565,329
California	2,391,482	2,149,110	4,540,592
Guam	30,000	15,000	45,000
Hawaii	140,885	17,090	157,975
Northern Marianas	30,000	15,000	45,000
Nevada	156,972	29,005	185,977

TABLE OF ALLOCATIONS BY STATE, FISCAL YEAR 1995—Continued

Regions and States	Continuations plus Gap Funding	New starts	Total
Palau	30,000	15,000	45,000
Region X:			
Alaska	37,394	62,606	100,000
Idaho	0	175,939	175,939
Oregon	305,496	107,669	413,165
Washington	515,189	220,795	735,984
National totals	21,793,606	14,618,562	36,412,168

BILLING CODE 4184–01–P

Appendix I

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ■ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B,C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain obligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the incoming period. The amount(s) in Column (g) should be the sum of amounts in columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6J. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Line 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

Title _____

_____

Applicant organization

_____

Date submitted

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

''Controlled substance'' means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

''Conviction'' means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal statutes;

''Criminal drug statute'' means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

''Employee'' means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All ''direct charge'' employees; (ii) all ''indirect charge'' employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point of the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

_____

Check ____ if there are workplaces on file that are not identified here.

Sections 76.630 (c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction.'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions.'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If the funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
- ☐ a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:
- ☐ a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:
- ☐ a. initial filing
- b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

13. Type of Payment *(check all that apply)*:
- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e. deferred
- ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–10089 Filed 4–26–95; 8:45 am]

BILLING CODE 4184–01–P

National Institutes of Health

National Institute on Aging; Workshop on Pre-Application Guidance for SBIR/STTR Proposals

Notice is hereby given of the National Institute on Aging's workshop on pre-application guidance for proposals submitted by small business concerns under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs for proposals related to technologies and approaches relevant to problems and needs of older people. The one-day workshop, beginning at 8:00 a.m., will be held on Monday, June 19, 1995, in the Natcher Building Auditorium on the campus of the NIH in Bethesda, Maryland. The workshop is open to ALL interested small business concerns and individuals; there is no registration fee. Presentations will be made by NIH staff involved in review process of SBIR and STTR applications as well as those involved in establishing the funding priorities within the awarding components. Representatives from other awarding components with complementary interests relevant to the aging population also will be present. In addition, the experience of some successful grantee small business concerns will be shared. Opportunities will be available for questions and discussions with the presenters and other NIH staff. Further information may be obtained from: Andrew A. Monjan, Ph.D., M.P.H., Chief, Neurobiology of Aging Branch, Neuroscience and Neuropsychology of Aging Program, National Institute on Aging, Gateway Building, Suite 3C307, 7201 Wisconsin Avenue MSC 9205, Bethesda, Maryland 20892–9205, Telephone: 301–496–9350, Fax: 301–496–1494, E-mail address: am39m@nih.gov.

Dated: April 14, 1995.

Richard Hodes,

Director, NIA.

[FR Doc. 95–10383 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, June 1–2, 1995, National Institute of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on June 1 from 8:30 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., section 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on June 1 and from 8:30 a.m. to adjournment on June 2 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10367 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: General Clinical Research Centers Committee.

Dates of Meeting: June 20–21, 1995.

Time: 8:00 a.m.—until adjournment.

Place of Meeting: Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Scientific Review Administrator: Dr. Richard Nahin, National Institutes of Health, 1 Rockledge Center, Room 6114, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0809.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health, HHS)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10368 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on June 1–2, 1995, convening at 9 a.m. on June 1 and at 8:30 a.m. on June 2 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 1 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C., Public Law 92–463, the meeting will be closed on June 1 from 10:30 a.m. to approximately 5 p.m. and on June 2 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10369 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Center for Research Resources (NCRR) for June 1995. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, NCRR; review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary or the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: The Subcommittee on Planning of the National Advisory Research Resources Council.

Executive Secretary: Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Room 4011, Building 12A, Bethesda, MD 20892, Telephone: (301) 496–6023.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 3B41, Building 31B, Bethesda, MD 20892.

Open: June 15, 7:30 a.m.–8:45 a.m.

Name of Committee: National Advisory Research Resources Council.

Dates of Meeting: June 15–16, 1995.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Open: June 15, 9 a.m. until recess.

Closed: June 16, 8 a.m. until 9:15 a.m.

Open: June 16, 9:15 a.m. until adjournment.

Name of Committee: Comparative Medicine Review Committee.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, 1 Rockledge Center, Room 6110, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0814.

Date of Meeting: June 11–13, 1995.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 11, 6:30 p.m.–recess.

Open: June 12, 8:30 a.m.–10 a.m.

Closed: June 12, 10 a.m. until adjournment.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Scientific Review Administrator: Dr. Jill Carrington, National Institutes of Health, 1 Rockledge Center, Room 6104, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0812.

Dates of Meeting: June 13–14, 1995.

Place of Meeting: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open: June 13, 8 a.m.–9 a.m.

Closed: June 13, 9 a.m. until adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health.)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10370 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, May 22 and 23, 1995, Embassy Suites Chevy Chase Pavilion, Chevy Chase I and II, 4300 Military Road, N.W., Washington, D.C.

This meeting will be open to the public on Monday, May 22, from 8:30 a.m. to 11:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 22 at 11:30 a.m. to recess and on May 23 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10372 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the Advisory Panel on Alzheimer's Disease

Pursuant to Pub. L. 92–463, notice is hereby given of the Advisory Panel on Alzheimer's Disease meeting to be held at the National Institutes of Health, Building 31, Conference Room 8, Bethesda, Maryland, from 10 a.m. to 5 p.m. on June 13 and again on June 14 from 9 a.m. to 2 p.m.

The meeting will be open to the public for discussion of draft material for the Panel's annual report and other business before the Panel. Attendance by the public will be limited to space available.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10373 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: June 13, 1995.

Time: 8:00 a.m.

Place: Bethesda Marriott Hotel, Bethesda, MD.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Admin., 6701 Rockledge Drive, Room 5110, Bethesda, MD 20892, (301) 594–7213.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10380 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	May–July 1995 meetings	Time	Location
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–594–7073.	July 10–11	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–594–7118.	July 21	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, 301–594–7210.	June 26–28	8:00 a.m.	Holiday Inn, Gaithersburg, Md.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–594–7112.	July 11–12	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–594–7112.	July 13	8:00 a.m.	Hyatt Regency Hotel, Bethesda, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, 301–594–7118.	July 7	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–594–7118.	July 14	9:00 a.m.	Holiday Inn, Chevy Chase, MD.
Biobehavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–594–7165	June 14–15	8:30 a.m.	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, 301–594–7145	May 30–June 1	9:00 a.m.	The Georgetown Inn, Washington, DC.
Human Development & Aging–1, Dr. Teresa Levitin, 301–594–7141.	June 22–23	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging–2, Dr. Peggy McCardle, 301–594–7293.	June 12–13	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.

Study section/contact person	May–July 1995 meetings	Time	Location
Human Development & Aging–3, Dr. Anita Miller Sostek, 301–594–7358.	June 22–23	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–594–7340.	June 15–16	8:00 a.m.	Radisson Barcelo Hotel, Washington, DC.
Biochemical Sciences Initial Review Group			
Biochemistry, Dr. Chhanda Ganguly, 301–594–7263	June 21–23	8:30 a.m.	Days Inn Hotel, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, 301–594–7264.	June 14–16	8:00 a.m.	Days Inn Hotel, Washington, DC.
Pathobiochemistry, Dr. Zakir Bengali, 301–594–7317	June 5–6	8:30 a.m.	Holiday Inn, Georgetown, DC.
Physiological Chemistry, Dr. Jerry Critz, 301–594–7322	June 15–17	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, 301–594–7212.	June 15–16	9:00 a.m.	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. John Beisler, 301–594–7149	June 15–17	8:30 a.m.	Holiday Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, 301–594–7163	June 7–9	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Metallobiochemistry, Dr. Edward Zapolski, 301–594–7302	June 22–24	8:30 a.m.	The Georgetown Inn, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–594–7147.	June 8–10	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–594–7166	June 19–21	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–594–7216	June 14–16	8:00 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301–594–7338.	June 19–21	8:30 a.m.	Marriott Hotel, Pooks Hill, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhari, 301–594–7344.	June 7–9	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Hematology–1, Dr. Clark Lum, 301–594–7260	June 1–3	8:00 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Hematology–2, Dr. Jerrold Fried, 301–594–7261	June 21–23	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pharmacology, Dr. Joseph Kaiser, 301–594–7241	June 21–23	8:30 a.m.	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group			
Biological Sciences–2, Dr. Camilla Day, 301–594–7389	June 28–30	8:30 a.m.	Holiday Inn, Alexandria, VA.
Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, 301–594–7385.	May 31–June 1	8:00 a.m.	Sheraton Reston Hotel, Reston, VA.
Cellular Biology and Physiology–2, Dr. Gerhard Ehrenspeck, 301–594–7387.	June 5–7	8:30 a.m.	Holiday Inn, Bethesda, MD.
Human Embryology & Development–2, Dr. Sherry Dupere, 301–594–7097.	June 12–13	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–594–7289.	July 20–21	8:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–594–7320	June 22–24	8:30 a.m.	Holiday Inn, Bethesda, MD.
Molecular Cytology, Dr. Ramesh Nayak, 301–594–7169	June 1–2	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Endocrinology and Reproductive Sciences Initial Review Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–594–7247.	June 11–13	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–594–7229	June 17–19	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development–1, Dr. Michael Knecht, 301–594–7247.	June 22–23	8:00 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–594–7218.	June 12–13	8:00 a.m.	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–594–7368.	June 12–14	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Genetic Sciences Initial Review Group			
Biological Sciences-1, Dr. Nancy Pearson, 301–594–9505	June 28–30	8:30 a.m.	Wyndham Bristol Hotel, Washington, DC.
Genetics, Dr. David Remondini, 301–594–7202	June 8–10	9:00 a.m.	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, 301–594–7336	June 21–23	9:00 a.m.	Holiday Inn, Georgetown, DC.
Mammalian Genetics, Dr. Jerry Roberts, 301–594–7051	June 7–9	8:30 a.m.	The Georgetown Inn, Washington, DC.

Study section/contact person	May–July 1995 meetings	Time	Location
Health Promotion and Disease Prevention Initial Review Group			
Epidemiology & Disease Control–1, Dr. Scott Osborne, 301–594–7060.	June 14–16	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Epidemiology & Disease Control–2, Dr. H.M. Stiles, 301–594–7194.	June 19–21	8:30 a.m.	Embassy Suites Hotel, Alexandria, VA.
Nursing Research, Dr. Gertrude McFarland, 301–594–7080.	June 7–9	8:30 a.m.	Ramada Inn, Rockville, MD.
Safety & Occupational Health, Dr. Gopal Sharma, 301–594–7130.	June 14–16	8:00 a.m.	Holiday Inn, Bethesda, MD.
Toxicology–1, Dr. Alfred Marozzi, 301–594–7278	June 14–16	8:00 a.m.	American Inn, Bethesda, MD.
Toxicology–2, Dr. Alfred Marozzi, 301–594–7278	June 28–30	9:00 a.m.	American Inn, Bethesda, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Mr. Howard Berman, 301–594–7234.	June 19–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Immunology, Dr. Calbert Laing, 301–594–7190.	June 7–9	8:30 a.m.	Savoy Suites Hotel, Washington, DC.
Immunobiology, Dr. Betty Hayden, 301–594–7310	June 14–16	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–594–7175.	June 21–23	8:30 a.m.	Holiday Inn, Georgetown, DC.
Immunology, Virology & Pathology, Dr. Lynwood Jones, 301–594–7262.	June 21–23	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Infectious Diseases and Microbiology Initial Review Group			
Bacteriology & Mycology–1, Dr. Timothy Henry, 301–594–7228.	June 19–20	8:30 a.m.	Sheraton Suites Hotel, Alexandria, VA.
Bacteriology & Mycology–2, Dr. William Branche, Jr., 301–594–7297.	June 7–9	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–594–7099 .	June 26–27	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics-1, Dr. Martin Slater, 301–594–7176.	June 14–16	8:30 a.m.	One Washington Circle Hotel, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, 301–594–7167.	June 21–23	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–594–7078.	June 8–9	8:00 a.m.	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–594–7108	June 14–16	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Musculoskeletal and Dental Sciences Initial Review Group			
General Medicine A–1, Dr. Harold Davidson, 301–594–7313.	June 11–13	7:30 p.m.	Marriott Hotel, Pooks Hill, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, 301–594–7301	June 5–8	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-1, Dr. Priscilla Chen, 301–594–7287.	June 14–16	7:00 p.m.	Ramada Inn, Alexandria, VA.
Oral Biology & Medicine-2, Dr. Priscilla Chen, 301–594–7287.	June 21–23	8:30 a.m.	Holiday Inn Old Town, Alexandria, VA.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–594–7301.	June 21–23	8:30 a.m.	Holiday Inn, Bethesda, MD.
Neurological Sciences Initial Review Group			
Neurological Sciences-1, Dr. Carl Banner, 301–594–7206	June 7–9	8:30 a.m.	Omni Shoreham Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, 301–594–7356.	June 14–16	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, 301–594–7158	June 21–23	8:30 a.m.	Wyndham Bristol Hotel, Washington, DC.
Neurology B–1, Dr. Lillian Pubols, 301–594–7325	June 6–8	8:30 a.m.	Holiday Inn, Georgetown, DC.
Neurology B–2, Dr. Herman Teitelbaum, 301–594–7245	June 19–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, 301–594–7123	June 28–July 1	8:30 a.m.	Radisson Barcelo Hotel, Washington, DC.
Nutritional and Metabolic Sciences Initial Review Group			
General Medicine A–2, Dr. Mushtaq Khan, 301–594–7168	June 12–14	8:30 a.m.	River Inn Hotel, Washington, DC.
Metabolism, Dr. Krish Krishnan, 301–594–7156	June 28–30	8:00 a.m.	Holiday Inn, Georgetown, DC.
Nutrition, Dr. Sooja Kim, 301–594–7174	June 14–16	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Oncological Sciences Initial Review Group			
Chemical Pathology, Dr. Edmund Copeland, 301–594–7154.	June 26–28	8:30 a.m.	River Inn Hotel, Washington, DC.

Study section/contact person	May–July 1995 meetings	Time	Location
Experimental Therapeutics-1, Dr. Philip Perkins, 301–594–7324.	June 14–16	8:30 a.m.	Hyatt Hotel, Arlington, VA.
Experimental Therapeutics–2, Dr. Marcia Litwack, 301–594–7366.	June 28–30	8:30 a.m	Holiday Inn Crowne Plaza, Rockville, MD.
Metabolic Pathology, Dr. Marcelina Powers, 301–594–7120.	June 27–29	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Pathology A, Dr. Larry Pinkus, 301–594–7315	June 6–8	7:00 p.m	Quality Hotel Capitol Hill, Washington, DC.
Pathology B, Dr. Martin Padarathsingh, 301–594–7192	June 7–9	8:00 a.m	Holiday Inn, Georgetown, DC.
Radiation, Dr. Paul Strudler, 301–594–7152	June 5–7	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathophysiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Anne Clark, 301–594–7115	June 14–16	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Michael Lang, 301–594–7332	June 14–16	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–594–7220.	June 7–9	8:30 a.m	One Washington Circle Hotel, Washington, DC.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–594–7257	June 12–14	8:30 a.m	Radisson Barcelo Hotel, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, 301–594–7269.	June 14–16	8:30 a.m	Holiday Inn, Capitol Hill, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–594–7132	June 14–16	8:30 a.m	Holiday Inn Crowne Plaza, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–594–7198.	June 7–9	8:30 a.m	The Latham Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsema, 301–594–7311	June 14–16	8:00 a.m	The Georgetown Inn, Washington, DC.
Surgery, Radiology and Bioengineering Initial Review Group			
Diagnostic Radiology, Dr. Catharine Wingate, 301–594–7295.	June 5–7	8:30 a.m	Hotel Washington, Washington, DC.
Surgery & Bioengineering, Dr. Paul Parakkal, 301–594–7258.	June 8–9	8:00 a.m.	The Georgetown Inn, Washington, DC.
Surgery, Anesthesiology & Trauma, Dr. Richard Panniers, 301–594–7348.	June 21–23	2:00 p.m	Holiday Inn, Bethesda, MD.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10371 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on May 15–17, 1995. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: Subcommittee on Cancer Centers.

Contact Person: Dr. Brian Kimes, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 3000, 6130 Executive Blvd., Bethesda, MD 20892–7094; (301) 496–8537.

Date of Meeting: May 15, 1995.
Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD.
Open: 5 pm to 7 pm.
Agenda: To discuss the cancer centers.

Name of Committee: Subcommittee on Information and Cancer Control.
Contact Person: Mr. Paul Van Nevel, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 10A31, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–6631.
Date of Meeting: May 15, 1995.
Place of Meeting: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: 7 pm to 8:30 pm.
Agenda: To discuss cancer control issues.

Name of Committee: National Cancer Advisory Board.
Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600A, 6130 Executive Blvd., Bethesda, MD 20892–7405; (301) 496–5147.
Dates of Meeting: May 16–17, 1995.
Place of Meeting: Conference Room 10, C Wing Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: May 16—8 am to approximately 5 pm.
Agenda: Report on activities of the President's Cancer Panel; the Acting Director's Report on the National Cancer Institute; Effects of Third Party Payment on Clinical Research; Cancer Centers; and the NCAB AD HOC Working Group on the NCI Intramural Programs.
Closed: May 17—8 am to approximately 9:45 am.
Agenda: For review and discussion of individual grant applications and extramural/intramural programmatic and personnel policies.
Open: May 17—9:45 am to adjournment.
Agenda: Subcommittee Reports and Continuing New Business.

Name of Committee: Subcommittee on Basic and Environmental Sciences.
Contact Person: Dr. Susan Sieber, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 11A03, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–5946.
Date of Meeting: May 16, 1995.
Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.
Open: 12:30 pm to 1:15 pm.
Agenda: To discuss basic and environmental sciences issues.

Name of Committee: Subcommittee for Special Priorities.
Contact Person: Ms. Irish Schneider, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 11A48, Bethesda, MD 20892; (301) 496–5534.
Date of Meeting: May 16, 1995.
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.
Open: 12:30 pm to 1:45 pm.
Agenda: To discuss issues related to special priorities.

Name of Committee: Subcommittee on Planning and Budget.
Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 11A19, Bethesda, MD 20892; (301) 496–5515.
Date of Meeting: May 16, 1995.
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: Immediately following adjournment of full Board meeting.
Agenda: To discuss the NCI budget and various planning issues.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research, 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10374 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, May 22–23, 1995, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:30 a.m. to 12:30 p.m. and from 1:30 to 5:30 p.m. on Monday, May 22; and from 9:30 a.m. to 12:30 p.m. and from 1:30 to 3:30 p.m. on Tuesday, May 23. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 22 from 8:30 to 9:30 a.m.; 12:30 to 1:30 p.m.; and from 5:30 to 6:30 p.m.; and on May 23 from 8:30 to 9:30 a.m.; from 12:30 to 1:30 p.m.; and from 3:30 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, NIH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Gateway Building, Room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Dr. Edward Lakatta, Acting Scientific Director, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, Maryland 21224, will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10375 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Acrylonitrile Study Advisory Panel, National Cancer Institute, May 3, 1995, 6130 Executive Boulevard, Room 418, Rockville, Maryland, which was published in the **Federal Register** on March 17 (60 FR 14439).

The meeting is being canceled because current pending issues were resolved at the March meeting of this Panel and it was decided an additional meeting at this time is not necessary.

Dated: April 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10376 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: May 12, 1995.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 325C, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Clinical Sciences.
Date: June 16, 1995.
Time: 8:30 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. Joseph Kaiser, Scientific Review Admin., 6701 Rockledge

Drive, Room 4132, Bethesda, MD 20892, (301) 594–7241.

Name of SEP: Microbiological and Immunological Sciences.
Date: June 23, 1995.
Time: 8 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, MD 20892, (301) 594–7078.

Name of SEP: Behavioral and Neurosciences.
Date: June 28, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 5198, Telephone Conference.
Contact Person: Dr. Peggy McCardle, Scientific Review Admin., 6701 Rockledge Drive, Room 5198, Bethesda, MD 20892, (301) 435–1258.

Name of SEP: Behavioral and Neurosciences.
Date: July 6, 1995.
Time: 12 noon.
Place: NIH, Rockledge II, Room 5198, Telephone Conference.
Contact Person: Dr. Peggy McCardle, Scientific Review Admin., 6701 Rockledge Drive, Room 5198, Bethesda, MD 20892, (301) 435–1258.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: July 10, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Peggy McCardle, Scientific Review Admin., 6701 Rockledge Drive, Room 5198, Bethesda, MD 20892, (301) 435–1258.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10377 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse on May 16–17, 1995.

On May 16, from 9 a.m. to 5 p.m., the meeting will be held at the National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892. This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

On May 17, from 9 a.m. to 1 p.m., the meeting will be held at the Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockville, MD 20857. In accordance with provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: April 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10378 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 14–15, 1995, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 14 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on June 14 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on June 15 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: April 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–10379 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions under the NIH Guidelines for Research Involving

Recombinant DNA Molecules (59 FR 34496 and 59 FR 40170).

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496 and 59 FR 40170).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today's action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the **Federal Register** of February 8, 1995 (60 FR 7630), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 6–7, 1995.

I. Background Information and Decisions on Actions Under the NIH Guidelines

A. Amendments to Sections I, III, IV, V, and Appendices C, F, G, I, and M of the NIH Guidelines Regarding Consolidated Review of Human Gene Transfer Protocols

On July 18–19, 1994, the National Task Force on AIDS Drug Development held an open meeting for the purpose of identifying barriers to AIDS Drug Discovery that included a proposal to streamline the dual review process for human gene transfer experiments. Members of the Task Force recommended a consolidated review process to enhance interactions between the NIH and the Food and Drug Administration (FDA). As a result of the Task Force's deliberations, recommendations were adopted in order to eliminate any unnecessary overlap between the NIH and FDA review of human gene transfer proposals. Both Drs. Varmus and Kessler noted that their respective agencies would cooperate fully to effect the changes necessary to implement these recommendations.

The NIH and FDA proposed that the RAC become advisory to both the NIH Director and the FDA Commissioner with regard to the review of human gene transfer protocols. In the interest of maximizing the resources of both agencies and simplifying the method and period of review for research protocols involving human gene transfer, the NIH and FDA should institute an interagency consolidated review process that incorporates the following principal elements:

(1) All human gene transfer protocols shall be submitted directly to the FDA. Submission will be in the format required by the FDA and the same format will be used by the RAC when public review is deemed necessary.

(2) Upon receipt, FDA review will proceed. The NIH/ORDA staff will simultaneously evaluate the protocol for possible RAC review.

(3) Factors which may contribute to the need for RAC review include: (a) New vectors/new gene delivery systems, (b) new diseases, (c) unique applications of gene transfer, and (d) other issues that require further public review.

(4) If either the NIH/ORDA or FDA decides that a proposal should be reviewed by the RAC, the proposal will be forwarded to the RAC primary reviewers immediately. Whenever possible, Principal Investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. (RAC reviewed applications will be distributed to RAC members approximately four weeks prior to the next quarterly RAC meeting.)

(5) Semiannual data reporting procedures will remain the responsibility of NIH (ORDA). Semiannual data reports will be reviewed by the RAC in a public forum.

In a letter dated August 2, 1994, Dr. Nelson A. Wivel, Director, ORDA, NIH, provided the RAC with background information regarding the National Task Force on AIDS Drug Development meeting, and proposed amendments to Sections I, III, IV, V, and Appendices C, F, G, I, and M of the NIH Guidelines, to reflect the proposed consolidated review process. The revised review process was proposed as follows:

(1) Investigators will be required to submit all human gene transfer proposals directly to the FDA in the format required by the FDA; therefore, investigators will no longer be required to provide a separate submission to NIH/ORDA for RAC review. The FDA Division of Cellular and Gene Therapies will forward a copy of each submission to NIH/ORDA. Both the FDA Division of Cellular and Gene Therapies and NIH/ORDA will simultaneously evaluate each proposal for the necessity for RAC review. Whenever possible, the investigators will be notified within 15 working days following receipt of the submission regarding the necessity for RAC review.

(2) If either the NIH/ORDA or FDA decides that a proposal should undergo RAC review, the proposal will be forwarded to the RAC primary reviewers immediately. Any protocol submitted less than 8 weeks before a RAC meeting will be reviewed at the following quarterly RAC meeting.

(3) The RAC will make recommendations regarding approval/disapproval of protocols, including any relevant stipulations, to the NIH Director. The NIH Director will review, approve, and transmit the RAC's recommendations/stipulations to the FDA Commissioner.

(4) The FDA will consider such recommendations/stipulations and will be responsible for completion of review. The RAC and NIH/ORDA will no longer have the responsibility for reviewing material submitted for Accelerated Review or for the review of minor modifications to human gene transfer protocols.

These proposed actions were discussed during the September 12–13, 1994, RAC meeting (published for public comments in the **Federal Register**, August 23, 1994 (59 FR 43426)). Dr. Philip Noguchi, Director, Division of Cellular and Gene Therapies, Center for Biologics Evaluation and Research, FDA, provided additional suggestions regarding the proposed review process including FDA adoption of the Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subjects (Points to Consider), of the NIH Guidelines. The FDA will require investigators to submit the Points to Consider with their proposed experiments. A lengthy discussion ensued involving RAC members' concerns and suggestions regarding the consolidated review process.

Dr. Noguchi submitted the following compromise proposal regarding the NIH/FDA consolidated review of human gene transfer experiments:

(1) Appendix M, Points to Consider, will not be deleted from the NIH Guidelines. The NIH Guidelines will be modified to provide for submission of Appendix M, Points to Consider, directly to the FDA prior to IND submission. The FDA will update their guidance documents in a similar manner. When necessary, the RAC will continue to be responsible for modifying Appendix M, Points to Consider.

(2) The RAC, NIH/ORDA, and FDA will decide on the necessity for full RAC review. The submitted Appendix M, Points to Consider, will be publicly available for all human gene transfer

submissions even if RAC review is not required.

(3) The RAC and FDA will broaden their scope of review for human gene transfer proposals to jointly and prospectively address global issues on a regular basis, e.g., ethical consideration in the implementation of gene therapy patient registry, access for ''orphan'' genetic disease patients to therapies, criteria for prenatal gene therapy, and transgenic technology for xenotransplantation.

(4) The RAC, NIH/ORDA, and FDA will establish a working group to enhance data monitoring efforts.

(5) A RAC, NIH/ORDA, and FDA working group will be established to propose long-term consolidation. The working group will have input from public, academic, and corporate sources.

The RAC approved a motion to (1) accept the FDA proposal submitted by Dr. Noguchi; (2) adopt the Categories for Accelerated Review that were approved by the RAC at its March 3–4, 1994, meeting as guidelines for proposals that will not require RAC review; (3) establish a working group to examine the review process for human gene transfer protocols (in response to Dr. Varmus' request to establish such a group); (4) the RAC prefers that any stipulation requirements should be satisfactorily met prior to forwarding its recommendation for approval to the NIH Director; and (5) accept the proposed amendments to the NIH Guidelines to reflect this revised consolidated review process (including acceptance of a revised Appendix M and incorporation of minor editorial changes). The motion was approved by a vote of 15 in favor, 0 opposed, and 1 abstention.

On October 26, 1994, NIH/ORDA forwarded the revised actions to the NIH Director for approval and the FDA Commissioner for concurrence. FDA legal counsel expressed concern that implementation of these actions would require amendment to the FDA Investigational New Drug Application Regulations (21 CFR Part 312) to accommodate the release of proprietary information. To resolve this concern, a waiver for release of information from the FDA to the NIH was proposed. While the NIH Guidelines could require such a waiver for NIH-funded investigators, it would be voluntary for others submitting proposed human gene transfer experiments to the FDA. The NIH expressed concern that failure to comply with voluntary waiver procedures may result in the loss of critical information necessary to maintain: (1) The human gene therapy database, (2) ''real-time'' reporting of serious adverse events, and (3) comprehensive overview (by category) by the RAC in a public forum. Public review and access to submission, review, and follow-up information is critical to the safe and focused advancement of human gene therapy research. As a result of these concerns, the NIH and FDA agreed on a compromise proposal that would accommodate the single submission format proposed at the July 18–19, 1994, meeting of the National Task Force on AIDS Drug Development, yet maintain public access to critical information and ''real-time'' reporting of adverse events. The compromise proposal involves simultaneous submission of human gene transfer protocols to both NIH and the FDA in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M-I through M-V, of the NIH Guidelines. NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

These revisions to the consolidated review process were discussed during the March 6–7, 1995, RAC meeting (published for public comments in the **Federal Register**, February 8, 1995 (60 FR 7630)). The following motions were made in response to the February 24, 1995, comments submitted by Ms. Sheryl Osborne of Viagene, Inc., San Diego, California: (1) A motion to retain the current requirement for obtaining Institutional Review Board (IRB) approval prior to RAC submission. A friendly amendment was made and accepted that ORDA should notify the Director of the Office for Protection from Research Risks regarding the necessity for IRB adherence to the detailed questions contained in Appendices M-II through M-V of the NIH Guidelines (Informed Consent issues). The amended motion was approved by a vote of 17 in favor, 0 opposed, and 1 abstention. (2) A motion was made that the RAC should continue to review and approve Phase I follow-up studies, i.e., Phase II and Phase III trials. Such studies may be submitted through the Accelerated Review process; however, the RAC retains the option to require full RAC review. The motion passed by a vote of 18 in favor, 0 opposed, and no abstentions.

The RAC approved a motion to approve the proposed amendments to Sections I, III, IV, V, and Appendices C, F, G, I, and M of the NIH Guidelines regarding NIH and FDA consolidated review of human gene transfer protocols, by a vote of 18 in favor, 0 opposed, and no abstentions.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Amendments to Section I, Scope of the NIH Guidelines

The amended version of Section I–A, Purpose, reads:

Section I–A. Purpose

The purpose of the NIH Guidelines is to specify practices for constructing and handling: (i) Recombinant deoxyribonucleic acid (DNA) molecules, and (ii) organisms and viruses containing recombinant DNA molecules.

Section I–A–1. Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approvals, or other applicable clearances, have been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval (see exception in Section I–A–1–a).

Section I–A–1–a. In the interest of maximizing the resources of both the NIH and the Food and Drug Administration (FDA) and simplifying the method and period for review, research proposals involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a consolidated review process involving both the NIH and the FDA. Submission of human gene transfer proposals will be in the format described in Appendices M–I through M–V of the Points to Consider. Investigators must simultaneously submit their human gene transfer proposal to both the NIH and the FDA in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M–I through M–V, of the Points to Consider. NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

B. Amendments to Section III, Experiments Covered by the NIH Guidelines

The amended version of Section III beginning paragraphs reads:

This section describes five categories of experiments involving recombinant DNA: (i) Those that require Institutional Biosafety Committee (IBC) approval, RAC review, and NIH Director approval before initiation (see Section III–A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see Section III–B), (iii) those that require Institutional Biosafety Committee approval before initiation (see Section III–C), (iv) those that require Institutional Biosafety Committee notification simultaneous with initiation (see Section III–D), and (v) those that are exempt from the NIH Guidelines (see Section III–E).

Note: If an experiment falls into either Section III–A or Section III–B and one of the other categories, the rules pertaining to Section III–A or Section III–B shall be followed. If an experiment falls into Section III–E and into either Sections III–C or III–D categories as well, the experiment is considered exempt from the NIH Guidelines.

Any change in containment level, which is different from those specified in the NIH Guidelines, may not be initiated without the express approval of NIH/ORDA (see Minor Actions, Section IV–C–1–b–(2) and its subsections).

The amended version of Section III–A reads:

Section III–A. Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation (see Section IV–C–1–b–(1)).

Section III–A–1. Major Actions Under the NIH Guidelines

Experiments considered as Major Actions under the NIH Guidelines cannot be initiated without submission of relevant information on the proposed experiment to the Office of Recombinant DNA Activities, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838, the publication of the proposal in the **Federal Register** for 15 days of comment, review by the RAC, and specific approval by the NIH (see Appendix M for submission requirements on human gene transfer experiments). The containment conditions or stipulation requirements for such experiments will be recommended by the RAC and set by the NIH at the time of approval. Such experiments require Institutional Biosafety Committee approval before initiation. Specific experiments already approved are included in Appendix D which may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838.

Section III–A–1–a. The deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally (see Section V–B), if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture, will be reviewed by the RAC.

Section III–A–2. Human Gene Transfer Experiments

Investigators must simultaneously submit their human gene transfer proposal to both the NIH and the FDA in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M–I through M–V, of the Points to Consider. The NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

Factors that may contribute to the necessity for RAC review include: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC review are those determined by the NIH/ORDA and FDA not to represent possible risk to human health or the environment (see Appendix M–VII, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review). Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that NIH/ORDA or the FDA require RAC review of the submitted proposal, the documentation described in Appendices M–I through M–V of the Points to Consider, will be forwarded to the RAC primary reviewers for evaluation. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. The RAC and FDA prefer that information provided in response to Appendix M contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be transmitted to the FDA Commissioner and considered as a Major Action by the NIH Director.

The amended version of Section III–B reads:

Section III–B. Experiments That Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation

Section III–B–1. Experiments Involving the Cloning of Toxin Molecules with LD_{50} of Less than 100 Nanograms per Kilogram Body Weight

Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, and Shigella dysenteriae neurotoxin). Specific approval has been given for the cloning in Escherichia coli K–12 of DNA containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Specific experiments already approved under this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838.

Section III–B–1–(a). Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH/ORDA. The containment conditions for such experiments will be determined by NIH/ORDA in consultation with ad hoc experts. Such experiments require Institutional Biosafety Committee approval before initiation (see Section IV–B–2–b–(1)).

The following section, Section III–C–7, is deleted:

Section III–C–7. Human Gene Transfer Experiments Not Covered by Sections III–A–2, III–B–2, III–B–3, and Not Considered Exempt under Section V–U

Certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that are not covered by Sections III–A–2, III–B–2, III–B–3, and that are not considered exempt under Section V–U must be registered with NIH/ORDA. The relevant Institutional Biosafety Committee and Institutional Review Board must review and approve all experiments in this category prior to their initiation.

C. Amendments to Section IV, Roles and Responsibilities

In Section IV–B–4–b, Submissions by the Principal Investigator to the NIH/ORDA, the following sections are amended to read:

Section IV–B–4–b–(3). Petition NIH/ORDA, with concurrence of the Institutional Biosafety Committee, for approval to conduct experiments specified in Sections III–A–1 and III–B of the NIH Guidelines;

In Section IV–B–4–e, Responsibilities of the Principal Investigator During the Conduct of the Research, the following section is added:

Section IV–B–4–e–(5). Comply with semiannual data reporting and adverse event reporting requirements for NIH and FDA-approved human gene transfer experiments (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols).

In Section IV–C–b–(1), Major Actions, the first paragraph is amended to read:

To execute Major Actions, the NIH Director shall seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the Notice of Meeting and Proposed Actions shall be published in the **Federal Register** at least 15 days before the RAC meeting. The NIH Director's decision/recommendation (at his/her discretion) may be published in the **Federal Register** for 15 days of comment before final action is taken. The NIH Director's final decision/recommendation, along with responses to public comments, shall be published in the **Federal Register**. The RAC and Institutional Biosafety Committee Chairs shall be notified of the following decisions:

Section IV–C–1–B–(1)–(e) is amended to read:

Section IV–C–1–b–(1)–(e). Recommendations made by the NIH Director to the FDA Commissioner regarding RAC-reviewed human gene transfer experiments (see Appendix M–VI–E, RAC Recommendations to the NIH Director);

Except for renumbering, the rest of the Section IV–C–1–B–(1) remains unchanged.

In Section IV–C–1–b–(2), Minor Actions, the following sections are deleted:

Section IV–C–1–b–(2)–(a). Reviewing and approving certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that qualify for the Accelerated Review process (see Section III–B–2);

Section IV–C–1–b–(2)–(b). Reviewing and approving minor changes to human gene transfer protocols under Section III–A–2 and III–B–2;

The rest of the section has been renumbered.

Section IV–C–3, Office of Recombinant DNA Activities (ORDA), will be amended to read:

Section IV–C–3. Office of Recombinant DNA Activities (ORDA)

ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including institutions, Biological Safety Officers, Principal Investigators, Federal agencies, state and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the NIH Director. ORDA's responsibilities include (but are not limited to) the following:

Section IV–C–3–a. Evaluating human gene transfer protocols for the necessity for RAC review (see Appendix M–VI–A);

Section IV–C–3–b. Serving as the focal point for data management of NIH and FDA approved human gene transfer protocols (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols);

Section IV–C–3–c. Administering the semiannual data reporting requirements (and subsequent review) for human gene transfer experiments, including experiments that are reviewed solely by the FDA (see Appendix M–VI, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review);

Section IV–C–3–d. Maintaining an inventory of NIH and FDA–approved human gene transfer experiments (including subsequent modifications);

Section IV–C–3–e. Reviewing and approving experiments in conjunction with ad hoc experts involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD_{50} of less than or equal to 100 nanograms per kilogram body weight in organisms other than Escherichia coli K–12 (see Section III–B–1 and Appendices F–I and F–II);

Section IV–C–3–f. Serving as the executive secretary of the RAC;

Section IV–C–3–g. Publishing in the **Federal Register**:

Section IV–C–3–g–(1). Announcements of RAC meetings and agendas at least 15 days in advance (NOTE—If the agenda for a RAC meeting is modified, ORDA shall make the revised agenda available to anyone upon request in advance of the meeting);

Section IV–C–3–g–(2). Proposed Major Actions (see Section IV–C–1–b–(1)) at least 15 days prior to the RAC meeting; and

Section IV–C–3–h. Reviewing and approving the membership of an institution's Institutional Biosafety Committee, and where it finds the Institutional Biosafety Committee meets the requirements set forth in Section IV–B–2 will give its approval to the Institutional Biosafety Committee membership;

D. Amendments to Section V, Footnotes and References of Section I through IV

The following sections are deleted:

Section V–U. Human studies in which the induction or enhancement of an immune response to a vector–encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector–encoded immunogen is not expected, are not covered under Sections III–A–2, III–B–2, or III–B–3. Such studies may be initiated without RAC review and NIH approval if approved by another Federal agency.

Section V–V. For recombinant DNA experiments in which the intent is to modify stably the genome of cells of one or more human subjects (see Sections III–A–2, III–B–2, and III–B–3).

Section V–W has been renumbered to Section V–U:

Section V–U. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacteria, or fungus) is one that is unknown to occur within the U.S. (see Section V–R). Determination of whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the Principal Investigator and the Institutional Biosafety Committee, in consultation with scientists knowledgeable of plant diseases, crops, and ecosystems in the geographic area of the research.

E. Amendments to Appendix C, Exemptions under Section III–E–6

The following sections are amended to read:

Appendix C–I–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation.

Appendix C–II–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation.

Appendix C–III–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation.

Appendix C–IV–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation.

Appendix C–V–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH Director approval before initiation.

Appendix C–VI–A–1. The NIH Director, with advice of the RAC, may revise the classification for the purposes of these NIH Guidelines (see Section IV–C–1–b–(2)–(b)).

E. Amendments to Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates

The following sections are amended, due to reference changes, to read:

Appendix F–I. General Information

. . . The results of such tests shall be forwarded to NIH/ORDA, which will consult with ad hoc experts, prior to inclusion of the molecules on the list (see Section IV–C–1–b–(2)–(c)).

Appendix F–III. Cloning of Toxic Molecule Genes in Organisms Other Than Escherichia coli K–12

Requests involving the cloning of genes coding for toxin molecules for vertebrates at an LD_{50} of <100 nanograms per kilogram body weight in host-vector systems other than Escherichia coli K–12 will be evaluated by NIH/ORDA in consultation with ad hoc toxin experts (see Sections III–B–1 and IV–C–1–b–(2)–(c)).

F. Amendments to Appendix G, Physical Containment

The following sections are amended, due to reference changes, to read:

Appendix G–II. Physical Containment Levels.

. . . Consideration will be given by the NIH Director, with the advice of the RAC, to other combinations which achieve an equivalent level of containment (see Section IV–C–1–b–(2)–(a)).

G. Amendments to Appendix I, Biological Containment

The following sections are amended, due to reference changes, to read:

Appendix I–II–A. Responsibility

. . . Proposed host-vector systems will be reviewed by the RAC (see Section IV–C–1–b–(1)–(f)). . . . Minor modifications to existing host-vector systems (i.e., those that are of minimal or no consequence to the properties relevant to containment) may be certified by the NIH Director without prior RAC review (see Section IV–C–1–b–(2)–(f)). . . . The NIH Director may rescind the certification of a host-vector system (see Section IV–C–1–b–(2)–(g)).

H. Amendments to Appendix M, The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subjects (Points to Consider)

Appendix M is amended to read:

Appendix M. The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subjects (Points to Consider)

Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH. Researchers not covered by the NIH Guidelines are encouraged to use Appendix M.

The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. In November 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, Splicing Life, which resulted from a two-year process of public deliberation and hearings. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded: civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies. In light of this public support, the Recombinant DNA Advisory Committee (RAC) is prepared to consider proposals for somatic cell gene transfer.

The RAC will not at present entertain proposals for germ line alterations but will consider proposals involving somatic cell gene transfer. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into the subject's somatic cells. Germ line alteration involves a specific attempt to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

In the interest of maximizing the resources of both the NIH and the Food and Drug Administration (FDA) and simplifying the method and period for review, research proposals involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a consolidated review process involving both the NIH and the FDA. Submission of human gene transfer proposals will be in the format described in Appendices M–I through M–V of the Points to Consider. Investigators must simultaneously submit their human gene transfer proposal to both the NIH and the FDA in a single submission format. This format includes (but is not limited to) the documentation described in Appendices M–I through M–V of the Points to Consider. NIH/ORDA and the FDA will simultaneously evaluate the proposal regarding the necessity for RAC review.

Factors that may contribute to the necessity for RAC review include: (i) New vectors/new gene delivery systems, (ii) New diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC review are those determined by the NIH/ORDA and FDA not to represent possible risk to human health or the environment (see Appendix M–VII, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review). Whenever possible, investigators will be notified within 15 working days following

receipt of the submission whether RAC review will be required. In the event that NIH/ORDA and the FDA require RAC review of the submitted proposal, the documentation described in Appendices M–I through M–V of the Points to Consider, will be forwarded to the RAC primary reviewers for evaluation. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. The RAC and FDA prefer that information provided in response to Appendix M contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be transmitted to the FDA Commissioner and considered as a Major Action by the NIH Director.

Public review of human gene transfer proposals will serve to inform the public about the technical aspects of the proposals as well as the meaning and significance of the research.

In its evaluation of human gene transfer proposals, the RAC, NIH/ORDA, and the FDA will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigation, namely, to protect the health and well being of human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) Vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, Appendices M–I through M–V requests information that will enable the RAC, NIH/ORDA, and the FDA, to assess the possibility that the proposed experiment(s) will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives).

In recognition of the social concern that surrounds the subject of human gene transfer, the RAC, NIH/ORDA, and the FDA, will cooperate with other groups in assessing the possible long-term consequences of the proposal and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

Appendix M will be considered for revisions as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

Appendix M–I. Submission Requirements—Human Gene Transfer Proposals

Investigators must simultaneously submit the following material to both: (1) The Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, (301) 496–9838 (see exemption in Appendix M–IX–A); and (2) the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448. Proposals will be submitted in the following order: (1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol (the IBC and IRB may, at their discretion, condition their approval on further specific deliberation by the RAC); (4) Responses to Appendix M–II, *Description of the Proposal*—5 pages; (5) protocol (as approved by the local Institutional Biosafety Committee and Institutional Review Board)—20 pages; (6) Informed Consent document—approved by the Institutional Review Board (see Appendix M–III); (7) appendices (including tables, figures, and manuscripts); (8) curricula vitae—2 pages for each key professional person in biographical sketch format; and (9) three 3½ inch diskettes with the complete vector nucleotide sequence in ASCII format.

Appendix M–II. Description of the Proposal

Responses to this appendix should be provided in the form of either written answers or references to specific sections of the protocol or its appendices. Investigators should indicate the points that are not applicable with a brief explanation. Investigators submitting proposals that employ the same vector systems may refer to preceding documents relating to the vector sequence without having to rewrite such material.

Appendix M–II–A. Objectives and Rationale of the Proposed Research

State concisely the overall objectives and rationale of the proposed study. Provide information on the specific points that relate to whichever type of research is being proposed.

Appendix M–II–A–1. Use of Recombinant DNA for Therapeutic Purposes

For research in which recombinant DNA is transferred in order to treat a disease or disorder (e.g., genetic diseases, cancer, and metabolic diseases), the following questions should be addressed:

Appendix M–II–A–1–a. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

Appendix M–II–A–1–b. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

Appendix M–II–A–1–c. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

Appendix M–II–A–1–d. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

Appendix M–II–A–2. Transfer of DNA for Other Purposes

Appendix M–II–A–2–a. Into what cells will the recombinant DNA be transferred? Why is the transfer of recombinant DNA necessary for the proposed research? What questions can be answered by using recombinant DNA?

Appendix M–II–A–2–b. What alternative methodologies exist? What are their relative advantages and disadvantages as compared to the use of recombinant DNA?

Appendix M–II–B. Research Design, Anticipated Risks and Benefits

Appendix M–II–B–1. Structure and Characteristics of the Biological System

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

Appendix M–II–B–1–a. What is the structure of the cloned DNA that will be used?

Appendix M–II–B–1–a–(1). Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

Appendix M–II–B–1–a–(2). What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)? From what source are these elements derived? Summarize what is currently known about the regulatory character of each element.

Appendix M–II–B–1–a–(3). Describe the steps used to derive the DNA construct.

Appendix M–II–B–1–b. What is the structure of the material that will be administered to the patient?

Appendix M–II–B–1–b–(1). Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells: (i) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests? (ii) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, VL30 RNA, other nucleic acids, or proteins) or contaminating viruses (both replication-competent or replication-defective) or other organisms in the cells or serum used for preparation of the virus stock including any contaminants that may have biological effects? (iii) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being conducted to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells? (iv) If methods other than those covered by Appendices M–II–B–1 through M–II–B–3 are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

Appendix M–II–B–1–b–(2). Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

Appendix M–II–B–2. Preclinical Studies, Including Risk-Assessment Studies

Provide results that demonstrate the safety, efficacy, and feasibility of the proposed procedures using animal and/or cell culture model systems, and explain why the model(s) chosen is/are most appropriate.

Appendix M–II–B–2–a. Delivery System

Appendix M–II–B–2–a–(1). What cells are the intended target cells of recombinant DNA? What target cells are to be treated ex vivo and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the target cells will incorporate the DNA?

Appendix M–II–B–2–a–(2). Is the delivery system efficient? What percentage of the target cells contain the added DNA?

Appendix M–II–B–2–a–(3). How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

Appendix M–II–B–2–a–(4). How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

Appendix M–II–B–2–b. Gene Transfer and Expression

Appendix M–II–B–2–b–(1). What animal and cultured cell models were used in laboratory studies to assess the in vivo and in vitro efficacy of the gene transfer system? In what ways are these models similar to and different from the proposed human treatment?

Appendix M–II–B–2–b–(2). What is the minimal level of gene transfer and/or expression that is estimated to be necessary for the gene transfer protocol to be successful in humans? How was this level determined?

Appendix M–II–B–2–b–(3). Explain in detail all results from animal and cultured cell model experiments which assess the effectiveness of the delivery system in achieving the minimally required level of gene transfer and expression.

Appendix M–II–B–2–b–(4). To what extent is expression only from the desired gene (and not from the surrounding DNA)? To what extent does the insertion modify the expression of other genes?

Appendix M–II–B–2–b–(5). In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene?

Appendix M–II–B–2–b–(6). Is the gene expressed in cells other than the target cells? If so, to what extent?

Appendix M–II–B–2–c. Retrovirus Delivery Systems

Appendix M–II–B–2–c–(1). What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

Appendix M–II–B–2–c–(2). How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

Appendix M–II–B–2–c–(3). What laboratory evidence is available concerning potential harmful effects of the transfer (e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses)? What steps will be taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

Appendix M–II–B–2–c–(4). Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ-line cells? What is the sensitivity of these analyses?

Appendix M–II–B–2–c–(5). Has a protocol similar to the one proposed for a clinical trial being conducted in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

Appendix M–II–B–2–d. Non-Retrovirus Delivery/Expression Systems

If a non-retroviral delivery system is used, what animal studies have been conducted to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ-line cells)? How long have the animals been studied after treatment? What safety studies have been conducted? (Include data about the level of sensitivity of such assays.)

Appendix M–II–B–3. Clinical Procedures, Including Patient Monitoring

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study. Specifically:

Appendix M–II–B–3–a. Will cells (e.g., bone marrow cells) be removed from patients and treated *ex vivo*? If so, describe the type, number, and intervals at which these cells will be removed.

Appendix M–II–B–3–b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy)?

Appendix M–II–B–3–c. What treated cells (or vector/DNA combination) will be given to patients? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

Appendix M–II–B–3–d. How will it be determined that new gene sequences have been inserted into the patient's cells and if these sequences are being expressed? Are these cells limited to the intended target cell populations? How sensitive are these analyses?

Appendix M–II–B–3–e. What studies will be conducted to assess the presence and effects of the contaminants?

Appendix M–II–B–3–f. What are the clinical endpoints of the study? Are there objectives and quantitative measurements to assess the natural history of the disease? Will such measurements be used in patient follow-up? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be conducted? How long will patient follow-up continue?

Appendix M–II–B–3–g. What are the major beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of deleterious consequences from the disease if recombinant DNA transfer is not used.

Appendix M–II–B–3–h. If a treated patient dies, what special post-mortem studies will be performed?

Appendix M–II–B–4. Public Health Considerations

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

Appendix M–II–B–4–a. On what basis are potential public health benefits or hazards postulated?

Appendix M–II–B–4–b. Is there a significant possibility that the added DNA will spread from the patient to other persons or to the environment?

Appendix M–II–B–4–c. What precautions will be taken against such spread (e.g., patients sharing a room, health-care workers, or family members)?

Appendix M–II–B–4–d. What measures will be undertaken to mitigate the risks, if any, to public health?

Appendix M–II–B–4–e. In light of possible risks to offspring, including vertical transmission, will birth control measures be recommended to patients? Are such concerns applicable to health care personnel?

Appendix M–II–B–5. Qualifications of Investigators and Adequacy of Laboratory and Clinical Facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of recombinant DNA. Describe the laboratory and clinical facilities where the proposed study will be performed. Specifically:

Appendix M–II–B–5–a. What professional personnel (medical and nonmedical) will be involved in the proposed study and what is their relevant expertise? Provide a two-page curriculum vitae for each key professional person in biographical sketch format (see Appendix M–I, *Submission Requirements*).

Appendix M–II–B–5–b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the followup period? What special arrangements will be made for the comfort and consideration of the patients. Will the research institution designate an ombudsman, patient care representative, or other individual to help protect the rights and welfare of the patient?

Appendix M–II–C. Selection of the Patients

Estimate the number of patients to be involved in the proposed study. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable. Specifically:

Appendix M–II–C–1. How many patients do you plan to involve in the proposed study?

Appendix M–II–C–2. How many eligible patients do you anticipate being able to identify each year?

Appendix M–II–C–3. What recruitment procedures do you plan to use?

Appendix M–II–C–4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

Appendix M–II–C–5. How will patients be selected if it is not possible to include all who desire to participate?

Appendix M–III. Informed Consent

In accordance with the Protection of Human Subjects (45 CFR Part 46), investigators should indicate how subjects will be informed about the proposed study and the manner in which their consent will be solicited. They should indicate how the Informed Consent document makes clear the special requirements of gene transfer research. If a proposal involves children, special attention should be paid to the Protection of Human Subjects (45 CFR Part 46), Subpart D, Additional Protections for Children Involved as Subjects in Research.

Appendix M–III–A. Communication About the Study to Potential Participants

Appendix M–III–A–1. Which members of the research group and/or institution will be responsible for contacting potential participants and for describing the study to them? What procedures will be used to avoid possible conflicts of interest if the investigator is also providing medical care to potential subjects?

Appendix M–III–A–2. How will the major points covered in Appendix M–II, *Description of Proposal*, be disclosed to potential participants and/or their parents or guardians in language that is understandable to them?

Appendix M–III–A–3. What is the length of time that potential participants will have to make a decision about their participation in the study?

Appendix M–III–A–4. If the study involves pediatric or mentally handicapped subjects, how will the assent of each person be obtained?

Appendix M–III–B. Informed Consent Document

Investigators submitting human gene transfer proposals must include the Informed Consent document as approved by the local Institutional Review Board. A separate Informed Consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, e.g., when a gene is used as a ''marker'' or to enhance the power of immunotherapy for cancer.

Because of the relative novelty of the procedures that are used, the potentially irreversible consequences of the procedures performed, and the fact that many of the potential risks remain undefined, the Informed Consent document should include the following specific information in addition to any requirements of the DHHS regulations for the Protection of Human Subjects (45 CFR 46). Indicate if each of the specified items appears in the Informed Consent document or, if not included in the Informed Consent document, how those items will be presented to potential subjects. Include an explanation if any of the following items are omitted from the consent process or the Informed Consent document.

Appendix M–III–B–1. General Requirements of Human Subjects Research

Appendix M–III–B–1–a. Description/Purpose of the Study

The subjects should be provided with a detailed explanation in nontechnical language of the purpose of the study and the procedures associated with the conduct of the proposed study, including a description of the gene transfer component.

Appendix M–IIIB–1–b. Alternatives

The Informed Consent document should indicate the availability of therapies and the possibility of other investigational interventions and approaches.

Appendix M–III–B–1–c. Voluntary Participation

The subjects should be informed that participation in the study is voluntary and that failure to participate in the study or withdrawal of consent will not result in any penalty or loss of benefits to which the subjects are otherwise entitled.

Appendix M–III–B–1–d. Benefits

The subjects should be provided with an accurate description of the possible benefits, if any, of participating in the proposed study. For studies that are not reasonably expected to provide a therapeutic benefit to subjects, the Informed Consent document should clearly state that no direct clinical benefit to subjects is expected to occur as a result of participation in the study, although knowledge may be gained that may benefit others.

Appendix M–III–B–1–e. Possible Risks, Discomforts, and Side Effects

There should be clear itemization in the Informed Consent document of types of adverse experiences, their relative severity, and their expected frequencies. For consistency, the following definitions are suggested: side effects that are listed as mild should be ones which do not require a therapeutic intervention; moderate side effects require an intervention; and severe side effects are potentially fatal or lifethreatening, disabling, or require prolonged hospitalization.

If verbal descriptors (e.g., ''rare,'' ''uncommon,'' or ''frequent'') are used to express quantitative information regarding risk, these terms should be explained.

The Informed Consent document should provide information regarding the approximate number of people who have previously received the genetic material under study. It is necessary to warn potential subjects that, for genetic materials previously used in relatively few or no humans, unforeseen risks are possible, including ones that could be severe.

The Informed Consent document should indicate any possible adverse medical consequences that may occur if the subjects withdraw from the study once the study has started.

Appendix M–III–B–1–f. Costs

The subjects should be provided with specific information about any financial costs associated with their participation in the protocol and in the longterm followup to the protocol that are not covered by the investigators or the institution involved.

Subjects should be provided an explanation about the extent to which they will be responsible for any costs for medical treatment required as a result of researchrelated injury.

Appendix M–III–B–2. Specific Requirements of Gene Transfer Research

Appendix M–III–B–2–a. Reproductive Considerations

To avoid the possibility that any of the reagents employed in the gene transfer research could cause harm to a fetus/child, subjects should be given information concerning possible risks and the need for contraception by males and females during the active phase of the study. The period of time for the use of contraception should be specified.

The inclusion of pregnant or lactating women should be addressed.

Appendix M–III–B–2–b. Long-Term Follow-Up

To permit evaluation of long-term safety and efficacy of gene transfer, the prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. The Informed Consent document should include a list of persons who can be contacted in the event that questions arise during the follow-up period. The investigator should request that subjects continue to provide a current address and telephone number.

The subjects should be informed that any significant findings resulting from the study will be made known in a timely manner to them and/or their parent or guardian including new information about the experimental procedure, the harms and benefits experienced by other individuals involved in the study, and any long-term effects that have been observed.

Appendix M–III–B–2–c. Request for Autopsy

To obtain vital information about the safety and efficacy of gene transfer, subjects should be informed that at the time of death, no matter what the cause, permission for an autopsy will be requested of their families. Subjects should be asked to advise their families of the request and of its scientific and medical importance.

Appendix M–III–B–2–d. Interest of the Media and Others in the Research

To alert subjects that others may have an interest in the innovative character of the protocol and in the status of the treated subjects, the subjects should be informed of the following: (i) That the institution and investigators will make efforts to provide protection from the media in an effort to protect the participants' privacy, and (ii) that representatives of applicable Federal agencies (e.g., the National Institutes of Health and the Food and Drug

Administration), representatives of collaborating institutions, vector suppliers, etc., will have access to the subjects' medical records.

Appendix M–IV. Privacy and Confidentiality

Indicate what measures will be taken to protect the privacy of patients and their families as well as to maintain the confidentiality of research data.

Appendix M–IV–A. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

Appendix M–IV–B. What provisions will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

Appendix M–V. Special Issues

Although the following issues are beyond the normal purview of local Institutional Review Boards, investigators should respond to the following questions:

Appendix M–V–A. What steps will be taken, consistent with Appendix M–IV, Privacy and Confidentiality, to ensure that accurate and appropriate information is made available to the public with respect to such public concerns as may arise from the proposed study?

Appendix M–V–B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

Appendix M–VI. RAC Review—Human Gene Transfer Protocols

Appendix M–VI–A. Categories of Human Gene Transfer Experiments That Require RAC Review

Factors that may contribute to the necessity for RAC review include, but are not limited to: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that RAC review is deemed necessary by the NIH and FDA, the proposal will be forwarded to the RAC primary reviewers for evaluation. In order to maintain public access to information regarding human gene transfer protocols, NIH/ORDA will maintain the documentation described in Appendices M–I through M–V (including protocols that are not reviewed by the RAC).

Appendix M–VI–B. RAC Primary Reviewers' Written Comments

In the event that NIH/ORDA or the FDA recommend RAC review of the submitted proposal, the documentation described in Appendices M–I through M–V will be forwarded to the RAC primary reviewers for evaluation.

The RAC primary reviewers shall provide written comments on the proposal to NIH/ORDA. The RAC primary reviewers' comments should include the following:

Appendix M–VI–B–1. Emphasize the issues related to gene marking, gene transfer, or gene therapy.

Appendix M–VI–B–2. State explicitly whether Appendices M–I through M–V have been addressed satisfactorily.

Appendix M–VI–B–3. Examine the scientific rationale, scientific context (relative to other proposals reviewed by the RAC), whether the preliminary in vitro and in vivo data were obtained in appropriate models and are sufficient, and whether questions related to safety, efficacy, and social/ethical context have been resolved.

Appendix M–VI–B–4. Whenever possible, criticisms of Informed Consent documents should include written alternatives for suggested revisions for the RAC to consider.

Appendix M–VI–B–5. Primary reviews should state whether the proposal is: (i) acceptable as written, (ii) expected to be acceptable with specific revisions or after satisfactory responses to specific questions raised on review, or (iii) unacceptable in its present form.

Appendix M–VI–C. Investigator's Written Responses to RAC Primary Reviewers

Appendix M–VI–C–1. Written responses (including critical data in response to RAC primary reviewers' written comments) shall be submitted to NIH/ORDA greater than or equal to 2 weeks following receipt of the review.

Appendix M–VI–D. Oral Responses to the RAC

Investigators shall limit their oral responses to the RAC only to those questions that are raised during the meeting. Investigators are strongly discouraged from presenting critical data during their oral presentations that was not submitted greater than or equal to 2 weeks in advance of the RAC meeting at which it is reviewed.

Appendix M–VI–E. RAC Recommendations to the NIH Director

The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be transmitted to the FDA Commissioner and considered as a *Major Action* by the NIH Director.

Appendix M–VII. Categories of Human Gene Transfer Experiments That May Be Exempt From RAC Review

A proposal submitted under one of the following categories may be considered exempt from RAC review unless otherwise determined by NIH/ORDA and the FDA on a case-by-case basis (see Appendix M–VI–A, Categories of Human Gene Transfer Experiments That Require RAC Review).

Note: In the event that the submitted proposal is determined to be exempt from RAC review, the documentation described in Appendices M–I through M–V will be maintained by NIH/ORDA for compliance with semiannual data reporting and adverse event reporting requirements (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols). Any subsequent modifications to proposals that were not reviewed by the RAC must be submitted to NIH/ORDA in order to facilitate data reporting requirements.

Appendix M–VII–A. Vaccines

This category includes recombinant DNA vaccines not otherwise exempt from RAC review (see Appendix M–IX–A for exempt vaccines).

Appendix M–VII–B. Lethally Irradiated Tumor Cells/No Replication-Competent Virus

This category includes experiments involving lethally irradiated tumor cells and: (1) vector constructs that have previously been approved by the RAC (or with the incorporation of minor modifications), or (2) a different tumor cell target.

Appendix M–VII–C. New Site/Original Investigator

This category includes the following: (1) initiation of a protocol at an additional site other than the site that was originally approved by the RAC, and (2) the investigator at the new site is the same as the investigator approved for the original study.

Appendix M–VII–D. New Site/New Investigator

This category includes the following: (1) initiation of a protocol at an additional site other than the site that was originally approved by the RAC, and (2) the investigator at the new site is different than the investigator approved for the original site.

Appendix M–VII–E. ''Umbrella'' Protocols

This category includes initiation of a RAC-approved protocol at more than one additional site (the Principal Investigator may be the same or different than the Principal Investigator approved for the original site).

Appendix M–VII–F. Modifications Related to Gene Transfer

This category includes experiments involving a modification to the clinical protocol that is not related to the gene transfer portion of study.

Appendix M–VII–G. Gene Marking Protocols

This category includes human gene marking experiments involving vector constructs that have previously been approved by the RAC and: (1) minor modifications to the vector constructs, or (2) a different tumor cell target.

Appendix M–VIII. Reporting Requirements—Human Gene Transfer Protocols

Appendix M–VIII–A. Semiannual Data Reporting

Investigators who have received approval from the FDA to initiate a human gene transfer protocol (whether or not it has been reviewed by the RAC) shall be required to comply with the semiannual data reporting requirements. Semi-annual Data Report forms will be forwarded by NIH/ORDA to investigators. Data submitted in these reports will be evaluated by the RAC, NIH/ORDA, and the FDA and reviewed by the RAC at its next regularly scheduled meeting.

Appendix M–VIII–B. Adverse Event Reporting

Investigators who have received approval from the FDA to initiate a human gene transfer protocol (whether or not it has been reviewed by the RAC) must report any serious adverse event immediately to the local IRB, IBC, NIH Office for Protection from Research Risks, NIH/ORDA, and FDA, followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, 6006 Executive Boulevard, Suite 323, Bethesda, Maryland 20892–7052, (301) 496–9838.

Appendix M–IX. Footnotes of Appendix M

Appendix M–IX–A. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not expected, may be initiated without RAC review if approved by another Federal agency.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines.* In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Effective Date: April 17, 1995.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 95–10381 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

National Institutes of Health; Notice of Meeting of the Panel to Assess the NIH Investment in Research on Gene Therapy

Notice is hereby given that the Panel to Assess the NIH Investment in Research on Gene Therapy, a fact-finding group reporting to the Advisory Committee to the Director (ACD), National Institutes of Health (NIH), will meet in public session at the William H. Natcher Building (Building 45) Conference Center, Board Room, National Institutes of Health, Bethesda, Maryland 20892, on May 15–16, 1995. The meeting will begin at approximately 9:00 a.m. to recess on May 15, and from approximately 9:00 a.m. to 1:00 p.m. on May 16.

The goal of the Panel is to make recommendations to the ACD about the scientific areas that NIH should emphasize and the funding mechanisms that should be employed in order best to advance the development of gene therapy. The purpose of the meeting is to provide the Panel with an opportunity to hear presentations regarding the current and anticipated research activities relevant to gene therapy that are supported by the various components of NIH, and to discuss how to proceed with its assessment of NIH's investment in gene therapy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact the person named below in advance of the hearing.

Attendance may be limited to seat availability. If you plan to attend the meeting as an observer or if you wish additional information, please contact Ms. Janice Ramsden, National Institutes of Health, Shannon Building, Room 235, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, by May 10.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–10382 Filed 4–26–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020–05–1330–00]

Notice of Availability of the Cyprus Tohono Corporation Proposed Mine Expansion Final Environmental Impact Statement, Phoenix District, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Final environmental impact statement.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, section 102(2)(c) of the National Environmental Policy Act of

1969, and The United States Department of the Interior Secretarial Order No. 3087, Section 5, Amendment No. 1, The Bureau of Land Management (BLM) has prepared an Environmental Impact Statement (EIS) for the Cyprus Tohono Corporation's (Cyprus) proposed mine expansion on the Tohono O'odham Nation (Nation), Papago Indian Reservation. The proposed action (Alternate B) consists of the conversion from in situ to open pit mining operations at Cyprus, the creation of a new overburden storage site, and a new copper oxide ore heap leach pad. Cyprus proposes production of approximately one billion pounds of copper during the thirteen year life of the proposal. A description of existing facilities and a detailed proposed plan of operations is presented in the Mine Plan of Operations for Expanded Open Pit and Heap Leach Operation (Cyprus Tohono Corporation, March 1995). The project was developed in response to three underlying needs: Mining lease compliance, continued industrial economic support for the Nation, and copper production.

Implementation of Alternative B would result in the disturbance of a total of approximately 1,850 acres, or approximately 0.06 percent of total Nation lands. Alternative B Mine Plan of Operations involves the development, operation, performance and maintenance of the following major project components: Open pit mine expansion, overburden disposal area, heap leach pads and ponds, stormwater collection and recycling, processing facilities, access and service roads, support facilities, utilities, spill prevention, control health and safety plans, reclamation and closure. There would be increases in royalties and employment. Scholarships would be established. Each of the major project components are described in the main body of the EIS. Alternative B Mine Plan of Operations was developed to minimize potential impacts to biological and visual resources. Alternative B Mine Plan of Operations moved some of proposed mine components south of an existing access road. Movement of the proposed project elements south of the existing mine access road serves to limit disturbance of natural drainages, reduce potential disturbance to bat colonies north of the site, and to provide a visual screen of existing mine plant site structures.

DATES: Appeals must be filed within 30 days of the Notice of Filing by the United States Environmental Protection Agency in the **Federal Register**. These procedures can be found in the Code of Federal Regulations (43 CPR 1610.5–2).

SUPPLEMENTARY INFORMATION: A limited number of copies of the Final EIS are available upon request to the: District Manager, Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. There are also copies available for review at the above location.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attn: Moon Hom, 2015 West Deer Valley Road, Phoenix, Arizona 85027; (602) 780–8090.

Dated: April 19, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–10341 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–32–P

[CO–934–95–4110–03; COC54300]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease COC 54300, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1994, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188(d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1994, subject to the original terms and condition of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office (303) 239–3767.

Dated: March 24, 1995.

Milada Krasilinec,

Land Law Examiner, Oil and Gas Lease Management Team.

[FR Doc. 95–10345 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–9B–M

[ID–060–1220–00–60016]

Restriction Order for Public Land at Blackwell Island, Cougar Bay and Ross Point

AGENCY: Bureau of Land Management, Coeur d'Alene Office, Idaho.

ACTION: Notice of Restriction Order for Public Land at Blackwell Island, Cougar Bay and Ross Point, Order No. ID060–13.

SUMMARY: By order, the following closure applies to Blackwell Island, described as all public land in Section 11: lot 23 (portion), Section 14: lots 3–6 (portion) and Section 15: lot 5 (portion), T.50N., R.4W., B.M.; Cougar Bay, described as all public land in Section 15, S1/2SW¼ (portion), and Section 22, N½ NW¼ (portion), T.50N., R.4W., B.M.; and Ross Point, described as all public land in Section 7: lot 5 (portion) and Section 8: lot 1 (portion) T.50N., R.4W., B.M.:

Overnight camping is prohibited.

Maps depicting the restricted area are available for public inspection at the BLM, Coeur d'Alene Office, 1808 North Third St., Coeur d'Alene, Idaho.

The authority for establishing this restriction is Title 43, Code of Federal Regulations, 8364.1.

This restriction becomes effective immediately and shall remain in effect until revoked and/or replaced with supplemental rules.

This restriction does not apply to:

(1) Any Federal, State, or local official or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

This restriction is necessary because the three sites do not have facilities which can accommodate overnight camping and the activities associated with long-term occupancy. In addition, due to the small acreage of these sites, the general urban surroundings and the sensitive combination of resources that are being protected, overnight camping is not a compatible recreation use.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Eric Thomson, Area Manager, Bureau of Land Management, 1808 North Third St., Coeur d'Alene, ID 83814.

Signed at Coeur d'Alene, Idaho this 20th day of April, 1995.

Dated: April 20, 1995.

Jenifer Arnold,

Acting Ecosystem Manager.

[FR Doc. 95–10346 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–GG–M

[NM–950–05–1420–00]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on May 15, 1994.

New Mexico Principal Meridian, New Mexico:

T. 16 N., R. 9 E., Accepted November 15, 1994, for Group 826 NM.

Supplementals:

T. 30 N., R. 14 W., Accepted March 10, 1995

T. 18 N., R. 5 W., Accepted March 10, 1995

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: April 19, 1995.

John P. Bennett,

Team Leader, Branch of Cadastral Survey/ Geo Science.

[FR Doc. 95–10343 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–930–1430–01, AR–035844]

Application Cancellation, Mohave and Yuma Counties, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By decision dated July 20, 1994, the Department of the Army, Corps of Engineers' application number AR–035844 to withdraw an additional 3,488.62 acres of public land for the Alamo Lake Flood Control Project was denied. The decision was based on the finding that there was not sufficient need or justification to withdraw additional lands for project purposes and that any future needs could be otherwise authorized.

Additionally, under Title I of Pub. L. 101–628, (Arizona Desert Wilderness Act), approximately 1,120.00 acres of the Arrastra Mountain and Rawhide Mountains Wilderness Areas overlapped the applied for land. Designation of the Arrastra Mountain and Rawhide Mountains Wilderness Areas satisfied the withdrawal need on the subject land and therefore negated the need for an additional withdrawal.

The segregative effect resulting with the filing of withdrawal application AR–035844 terminated by statute on October 20, 1991. Based upon the State Director's recommendation and decision and upon publication in the **Federal Register**, application AR–035844 is cancelled and closed on the Bureau of Land Management records.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 650–0518.

Dated: April 17, 1995.

Herman L. Kast,

Deputy State Director, Resource Planning, Use & Protection Division.

[FR Doc. 95–10344 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Notice of Availability, Final Apex Houston Oil Spill Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) herein releases the final Apex Houston Oil Spill Restoration Plan (Final Plan). The Final Plan describes the techniques, schedule, and budget for a project to restore natural resources injured as a result of an oil spill that killed approximately 9,000 seabirds along the coast of central California in 1986. The Final Plan also includes responses to comments about the Draft Plan (**Federal Register**/Vol. 59/ No. 213/55282) that were received during a 45-day public comment period that ended on December 19, 1994. Money to carry out this project was obtained via a Consent Decree that ended litigation on the case in August 1994. The Service will begin implementation of the Final Plan in 1995 and will conclude the project in approximately 2004. A Natural Resources Trustee Council containing representatives of the Service, the National Oceanic and Atmospheric Administration, and the California Department of Fish and Game will oversee the project.

DATES: Written comments on the Final Plan must be submitted on or before June 26, 1995.

ADDRESSES: Written comments or materials regarding the Final Plan should be sent to the following address. Comments or requests for copies of the Final Plan can also be sent via FAX to (916) 979–2128. Daniel Welsh, Chief, Branch of Natural Resource Damage Assessment, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825, (916) 979–2110.

FOR FURTHER INFORMATION CONTACT: Requests for further information or additional copies of the Final Plan may be made to: Daniel Welsh, Chief, Branch of Natural Resource Damage Assessment, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825, (916) 979–2110.

Restoration of Nearshore Breeding Seabird Colonies on the Central California Coast: Final Plan

I. Executive Summary

Between January 28 and February 4, 1986, the transportation barge APEX HOUSTON discharged an undetermined amount of San Joaquin Valley crude oil while in transit from San Francisco Bay to the Long Beach Harbor. The oil spill caused damage to State of California and Federal resources from San Francisco to the Big Sur coast. Approximately 9,000 seabirds were killed, including 6,000 common murres (*Uria aalge*), in addition to other aquatic life in and around the coastal waters of central California. Both the State and Federal governments responded to the spill and began assessing damages as a result of the spill.

The State and Federal natural resource trustees commenced litigation in this matter against potentially

responsible parties in January 1989. The complaints alleged claims for natural resource damages, costs, and penalties pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, Title III of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* (formerly the National Marine Protection, Research and Sanctuaries Act, ''MPRSA''), the California Harbors & Navigation Code 293 and 294, and other State Law.

In August 1994 the parties settled this matter in a Consent Decree entered by the Federal District Court for the Northern District of California for a total of $6,400,000. As part of the natural resources damage settlement, $4,916,430 has been allocated for the restoration of common murres in central California. The common murre restoration project is the subject of this Final Plan. An additional $500,000 has been allocated for the acquisition of habitat for the marbled murrelet (*Brachyramphus marmoratus*), a species that is listed under the Federal and State Endangered Species Acts and was impacted by the spill. The murrelet project is being carried out under State lead and is included, but not described in detail, in this Final Plan. The remainder of the $6,400,000 collected in the settlement was for penalties and costs incurred as a result of the spill.

A Trustee Council, comprised of representatives of each Trustee (California Department of Fish and Game, National Oceanic and Atmospheric Administration, and U.S. Fish and Wildlife Service) was established to review and select restoration actions for natural resources injured by the spill. This Council will meet regularly during the duration of the project to review progress and make necessary changes. The Trustee Council has approved this Final Plan for restoration of common murres.

The goal of the common murre restoration project is to recolonize common murres at historic breeding colonies in the areas where colonies were extirpated or severely depleted by the APEX HOUSTON oil spill. Social attractants (decoys and recorded vocalizations of common murres) will be used to attract common murres to nest at historic nearshore colonies in the vicinity of San Francisco and Monterey. Common murres will be monitored at these sites and at reference sites in the vicinity of Point Reyes and the Farallon Islands in order to evaluate and refine the recolonization project. Parameters to be monitored include colony size, reproductive success, behavior, and phenology of common murres. In addition, anthropogenic factors (e.g., boat disturbance, aircraft overflights, oiling) and natural factors (e.g., predation, diet) that may affect the success of recolonization efforts will be monitored. This project may take a minimum of 10 years to achieve success because common murres have inherently low reproductive rates and do not breed until they are several years old.

II. Introduction

Nearshore breeding colonies of common murres (*Uria aalge*) throughout central coastal California (Point Arena to Big Sur) decreased by 60.1 percent between 1980 and 1986 (Takekawa et al. 1990). This population decline was attributed to high mortality from gill-net fishing, oil spills (including the Apex Houston spill), and a severe El Nino-Southern Oscillation event in 1982–1983 (Takekawa et al. 1990, Swartzman and Carter 1991, Carter et al. 1992). The APEX HOUSTON oil spill, which occurred principally between San Francisco and the Monterey Peninsula, killed nearly 9,000 seabirds in February 1986 (Siskin et al. 1993). This mortality included approximately 1,293 rhinoceros auklets (*Cerorhinca monocerata*), 180 small alcids, 12 marbled murrelets (*Brachyramphus marmoratus*), and 1,206 other birds (including loons, grebes, scoters, cormorants, shorebirds, and gulls) (Siskin et al. 1993). In addition, approximately 6,000 common murres were killed (Siskin et al. 1993). The common murre colony at Devil's Slide Rock was found to be abandoned, subcolonies at Castle Rocks disappeared, and other central coastal breeding sites (e.g., Hurricane Point Rocks, Point Reyes) were greatly reduced after the spill (Takekawa et al. 1990, Swartzman and Carter 1991, Carter et al. 1992) (Figure 1).

In the early 1900's, common murres bred at Prince Island in southern California (Carter et al. 1992). However, the central California population currently represents the southernmost range for breeding common murres in the Pacific. Future oil spills and other catastrophic events (e.g., disease, predation, climate change) could result in the extirpation of this population as well as a reduction in the species' geographic range. The restoration of former common murre colonies would aid in securing the central coastal California common murre population and would spread the risk of future disasters among colony sites over a wider range of the California coast.

The goal of this project is to restore common murres at historic breeding colonies in areas where colonies were extirpated or severely depleted by the APEX HOUSTON oil spill. The project will be conducted over approximately 10 years. A total of $4,916,430 was obtained for this project via the court settlement.

III. Purpose

The restoration funds were recovered under the Federal Clean Water Act and National Marine Sanctuaries Act, the California Harbors and Navigation Code §§ 293 and 294, and other State Law. A Trustee Council, comprised of representatives of each Trustee, was established to review and select restoration actions. As part of the settlement in the APEX HOUSTON litigation, $4,916,430 has been allocated for the restoration of common murre colonies that suffered damage from the APEX HOUSTON oil spill. This project should aid in restoring the central California common murre population at historic breeding colonies in areas where colonies were extirpated or severely depleted by the APEX HOUSTON oil spill. Restoring this population to a larger part of its historic range will aid in spreading the risk of future catastrophic events (e.g. oil spills, disease, storms) between more colony sites and over a broader section of the California coast.

IV. Restoration Alternatives Considered and Selected

(A) Alternatives Considered

The Federal Clean Water Act and other Federal law states that natural resources damages ''shall be used to restore, rehabilitate, or acquire the equivalent of'' natural resources damaged or destroyed as a result of a discharge of oil (Clean Water Act § 311(f)(5), 33 U.S.C. § 1321(f)(5)). In addition, the Service's Natural Resource Damage Assessment program in Region 1 has found the following criteria helpful in setting priorities when evaluating options for restoration of natural resources damaged due to releases of oil or hazardous substances (Wickham et al. 1993):

(1) On-site and in-kind, in which restored resources occur at the injured site and are physically and biologically the same as those lost;

(2) Off-site and in-kind, in which restored resources occur at a site other than that injured, but similar physical and biological resources are restored;

(3) On-site and out-of-kind, in which restored resources at the impact site are physically and biologically different from those lost;

(4) Off-site and out-of-kind, in which restored resources are at a site other than the impact site and are physically

and biologically different from those lost; and,

(5) In special cases, acquisition of equivalent existing resources/services under private ownership, which does not replace lost resources, but reduces potential future loss by placing acquired resources under public management and protection (e.g., the marbled murrelet habitat acquisition project).

Therefore, the Trustees concentrated their damage assessment and restoration efforts on the recovery of central California seabird populations, especially alcids, since these birds incurred the greatest losses due to the APEX HOUSTON oil spill (Siskin et al. 1993).

Alternatives considered for seabird restoration included active recolonization/restoration projects and habitat acquisition projects. Alternatives were compared based on the criteria described above, as well as the technical feasibility of the project, importance to the public interest, and monetary costs. Two projects have been selected for immediate implementation. These are the acquisition of marbled murrelet breeding habitat and the recolonization of common murres using social attraction techniques. The Trustee Council will reevaluate these two projects and consider additional restoration projects and/or supplemental methodology at least annually. The Trustee Council will reappropriate and reauthorize funds as needed.

Recolonization/restoration efforts were considered for common murres and rhinoceros auklets, two seabird species that suffered high mortality as a result of the spill. The rhinoceros auklet project involved use of artificial nest sites to enhance breeding populations along the central California coast. This project was not chosen for immediate implementation for several reasons. A large increase in the California rhinoceros auklet population occurs during the winter months and far exceeds the summer estimated breeding population (Briggs et al. 1987). It is believed that this large increase is due to migrants moving into the area from more northern colonies (Briggs et al. 1987). In addition, the rhinoceros auklet population within the area of the spill (i.e. the local population) had been increasing since the early 1980's and continued to increase after the APEX HOUSTON spill (Ainley and Boekelheide 1990, Carter et al. 1992). This suggests that many of the 1,293 rhinoceros auklets estimated to have been killed by the APEX HOUSTON spill (Siskin et al. 1993) were probably wintering birds from outside the local breeding population. As a result, restoration of rhinoceros auklets received a lower priority.

The common murre recolonization project (describe herein) was given higher priority than rhinoceros auklet restoration because its potential benefits were linked more closely to the injuries caused by the spill. The extirpation of the Devil's Slide Rock colony and a severe reduction at the Castle and Hurricane rocks colonies were attributed to the common murre mortalities that resulted from the APEX HOUSTON oil spill (Swartzman and Carter 1991). As a result, damage to the local breeding population was demonstrated (Swartzman and Carter 1991).

An additional site (Bodega Rock in Sonoma County) for common murre recolonization was suggested during the public comment period. Bodega Rock is an active seabird colony and in 1989 it contained 558 Brandt's cormorant (*Phalacrocorax penicillatus*) nests and 12 western gull (*Larus occidentalis*) nests (Carter et al. 1992). This location was not selected for implementation of murre recolonization techniques because there are no known records of common murres breeding on this rock.

A third restoration project involving construction of a seabird breeding and rehabilitation facility was rejected because its cost was prohibitive relative to funds available, and because the California Department of Fish and Game's Office of Oil Spill Prevention and Response is already implementing a statewide oiled wildlife care network.

Four habitat acquisition projects were considered: purchase of Cape Vizcaino in northern Mendocino County to protect nesting seabirds, purchase of coastal land near Castle Rock to protect a mainland colony of common murres, purchase of lands within San Francisco Bay, and purchase of marbled murrelet nesting habitat along the central California coast. The first three projects were given lower priorities because they were outside of the area impacted by the spill (Cape Vizcaino), were too costly (mainland site near Castle Rock), or were beneficial primarily to species that were not affected by the spill (sites in San Francisco Bay). The purchase of marbled murrelet nesting habitat along the central California coast was selected for immediate implementation with settlement funds allocated specifically for that project.

(B) Alternatives Selected

1. Acquisition of Marbled Murrelet Nesting Habitat. The acquisition of marbled murrelet nesting habitat along the central California coast was selected because acquisition would occur within the area impacted by the spill and damage to the local population could be demonstrated. In addition, this project has great importance to the public because it will provide long-term protection of a species listed under the Federal and State Endangered Species Acts. The Trustee Council believes that the $500,000 allocated to this project will be sufficient to obtain suitable habitat to compensate for the murrelets injured in the spill, provided that it is leveraged with other resources. The Trustees regard augmentation of the budget for the marbled murrelet project as the highest priority for any funds that may become available from the murre recolonization project.

2. Recolonization of Impacted Common Murre Colonies. The second project the Trustees have selected for immediate implementation is the recolonization of common murre colonies at Devil's Slide and San Pedro rocks in San Mateo County and Castle and Hurricane Point rocks in Monterey County.

a. Devil's Slide and San Pedro Rocks Common Murre Recolonization:

Recolonize common murres at Devil's Slide and San Pedro rocks (San Mateo County, California) using social attraction methods (decoys and recorded vocalizations) and develop reference information needed to evaluate and refine restoration efforts.

Location(s): Devil's Slide and San Pedro rocks, San Mateo County, California; Point Reyes area (Point Reyes, Point Resistance, Double Point, and Miller Point rocks), Marin County, California; Farallon Islands, San Francisco County, California.

Justification: Common murres are an extremely important and visible part of the California seabird community (Carter et al. 1992). Common murres are the most abundant nesting species and have the greatest biomass of all breeding seabirds in the state (Sowls et al. 1980, Ainley and Boekelheide 1990). In addition, common murres comprise 40 percent of the breeding seabirds found in central California (Carter et al. 1992). This population sustained severe losses from commercial and subsistence egging in the 1800's and early 1900's, from chronic oil pollution and spills in the early to mid 1900's, and from chronic oil pollution and gillnetting in the 1980's and 1990's (Ainley and Lewis 1974, Takekawa et al. 1990, Carter et al. 1992).

Common murres were last recorded breeding at San Pedro Rock in 1908, when the colony was in the process of being extirpated by egg collectors (Ray 1909). During the 1980's common

murres in central California declined dramatically due to mortality from gill nets, oil spills (including the 1984 PUERTO RICAN and 1986 APEX HOUSTON), as well as the severe 1982–83 El Nino event (Ainley and Boekelheide 1990, Takekawa et al. 1990, Carter et al. 1992). The APEX HOUSTON spill in 1986 contributed significantly to the loss of the Devil's Slide Rock colony near San Francisco (Swartzman and Carter 1991). The San Pedro and Devil's Slide rocks colonies are in close proximity and constitute the only common murre colonies between San Francisco and Monterey. This is a large portion of the range of the central California common murre population. The recolonization of abandoned common murre colonies in central California will contribute to the restoration of this seabirds' historic geographic range.

Given the current depleted condition of the central California common murre population (Ainley and Boekelheide 1990, Takekawa et al. 1990, Swartzman and Carter 1991, Carter et al. 1992, Ainley et al. 1994), extirpated colonies are not likely to be reestablished in the foreseeable future without human assistance. The San Pedro Rock colony has not recolonized over the past 85 years and the Devil's Slide Rock colony has not been recolonized in the 8 years following the APEX HOUSTON spill (Carter et al. 1992, Carter and Takekawa, unpubl. data). Similarly, the Prince Island colony in southern California has not been recolonized since extirpation in the early 1900's (Carter et al. 1992). Furthermore, all six nearshore colonies in central California have remained severely depleted since the mid-1980's (Carter et al. 1992). The reductions of the geographic range and small numbers of breeding common murres along the central California coastline increase the risk that future catastrophic events will result in extinction of the central California population.

Studies of seabird colony formation in Maine demonstrated that recolonization can be achieved using social attractants (Kress 1978, Kress and Nettleship 1988, Kress et al. 1992). The use of decoys and tape recordings has attracted prospecting seabirds, which have then bred, once a threshold group size has been reached. These techniques have assisted in the recolonization of several colonial nesting seabird species (Podolsky 1985; Podolsky and Kress 1989, 1992). These techniques have been utilized in an effort to recolonize common murres in Maine. The common murre recolonization project began when 15 life-size common murre decoys were deployed on Matinicus Rock in summer 1992 (National Audubon Society, unpubl. data). The closest common murre nesting colony to Matinicus Rock is located approximately 75 miles east on Murre Ledge, a small Canadian island. Common murres began landing among the decoys within 2 days of starting the vocalization tapes (National Audubon Society, unpubl. data). As many as four common murres were sighted at one time among the decoys and at least two birds were present throughout May and June 1992 courting and copulating among the decoys (National Audubon Society unpubl. data). This effort has included the use of various combinations of social attractant techniques to determine the most effective combination, e.g., decoys with and without sound, sound only, decoys with sound and with and without egg decoys, and sound variations (Schubel 1993). Results indicate that a combination of visual and sound stimuli are essential to attract common murres. The highest common murre numbers and activity were observed where egg and murre decoys were accompanied by sound, and decoys were most densely arranged. The recolonization project has continued during 1993 and 1994 with promising results. Common murres continue to exhibit pre-breeding behavior (such as courtship displays, copulation, and passing of fish between potential mates), and the number of common murres attracted to the decoys has increased to approximately 25 birds (National Audubon Society, unpubl. data). However, social attraction techniques must be applied for many years before breeding begins and a self-sustaining breeding colony can be attained (Kress and Carter 1991).

In order to refine recolonization methods and evaluate their success, reference information will be needed on the reproductive biology, behavior, and phenology of common murres at an unmanipulated nearshore site in the local area. However, little information is available from nearshore colonies in central California. Monitoring attendance patterns, arrival dates, reproductive success, and behavior of breeding and nonbreeding common murres at accessible colonies in the Point Reyes area will provide a comparison to evaluate recolonization of Devil's Slide and San Pedro rocks. The Point Reyes colonies (i.e., Point Reyes, Point Resistance, Double Point, and Miller Point rocks) are the closest to the recolonization sites and should provide a reference for what would normally be expected in a nearshore common murre colony as well as a good comparison with the recolonization site. The monitoring conducted at these unmanipulated colonies will be used to assess recolonization responses and common murre activity patterns at recolonization sites, as well as aid in supporting refinement of recolonization methods.

In addition, unique information will be needed from the common murre colony at the South Farallon Islands at Farallon National Wildlife Refuge in order to evaluate recolonization responses and refine techniques. Common murre reproductive success, diet, and breeding biology have been studied for over 20 years at the South Farallon Islands as part of long-term monitoring of seabird populations required for the Farallon National Wildlife Refuge and other research conducted by the Point Reyes Bird Observatory (Ainley and Boekelheide 1990, Ainley et al. 1994). As a result of these studies, a small number of individually marked birds of known age and sex exist at the Farallon Islands. Limited information is available concerning the attendance of breeding and nonbreeding common murres at breeding sites, especially during winter. Information obtained on individually-marked birds, where age and sex are known, would give a better understanding of expected time-in-attendance and behavior at breeding sites for adult and subadult common murres during the breeding and nonbreeding seasons. Detailed information on common murre attendance and prospecting in the winter will make it possible to evaluate the significance of winter attendance at the recolonization sites. If winter attendance is crucial to successful breeding, social attraction methods may have to be deployed for a longer period. In addition, all accessible subcolonies of common murres at the South Farallon Islands would be examined for more general attendance patterns throughout the year.

Attendance, breeding biology, and behavior will be monitored during the breeding season in marked and unmarked birds in plots at the South Farallon Islands so that recolonization responses at recolonization sites can be more effectively evaluated. Certain colonies with potential for future intensive monitoring efforts may be examined in greater detail, including reproductive success. This information will be important in evaluating and modifying the social attraction methods used at the restoration sites. Information that is only available at this larger, more accessible, and closely monitored common murre colony, including

information on known-aged common murres, will be used to refine and assess recolonization efforts. All research conducted on the Farallon National Wildlife Refuge must be approved by the U.S. Fish and Wildlife Service, San Francisco Bay National Wildlife Refuge Complex. All research conducted is evaluated by Refuge staff to ensure that the activities associated with the research are compatible with the purposes for which the refuge was established.

Proposed Actions: Social attraction techniques will be used to recolonize common murres at Devil's Slide and San Pedro rocks. The use of social attraction techniques, similar to those used elsewhere to encourage recolonization by several seabird species, will be employed (Kress 1983, Podolsky 1985, Podolsky and Kress 1989). It is possible that small numbers of common murres are still alive that originally bred at Devil's Slide Rock. Therefore, it is important to begin the recolonization project as soon as possible in order to attract any remaining common murres that have a history of attachment to this colony. Preliminary work will consist of selecting observation points to view recolonization sites, constructing and installing observation blinds, obtaining access permits, and purchasing needed equipment. Aerial surveys of central California breeding seabird colonies and periodic observations of breeding colonies from mainland vantage points will be conducted in spring and summer 1995. Additional aerial reconnaissance of Devil's Slide and San Pedro rocks will be conducted to obtain photographs for mapping the restoration sites. Reconnaissance trips to Devil's Slide and San Pedro rocks will take place to determine equipment and procedures needed to deploy social attraction equipment. Ladders may be installed to allow safe access onto the colonies for project personnel.

Decoys and audio equipment will be placed on the rocks in fall 1995 before common murres begin to frequent nesting islands. Recordings of common murre breeding vocalizations will be made at the Farallon NWR. Between 100 and 200 life-size common murre decoys will be positioned on suitable nesting habitat on Devil's Slide and San Pedro rocks. The decoys will be secured to the rock in a fashion that simulates occupied common murre colonies. Densities and locations of decoys will be based on past aerial photos of the active Devil's Slide Rock colony (taken in 1982) and observations of common murres at existing reference sites from mainland vantage points and aerial photos. Several omnidirectional weather resistant loudspeakers will be positioned at the recolonization sites. Compact disks of California common murre vocalizations will be played prior to and throughout the breeding season from December to August. Daily observations of the recolonization sites will begin once decoys have been deployed and will continue through July. Devil's Slide Rock will be observed from the mainland using a portable blind and telescope. San Pedro Rock observations will occur from a blind located on the rock, from a boat, and/or from the mainland.

Data collected will include common murre arrival date, number of common murres present, behavior of common murres, interaction with other species (e.g., Brandt's Cormorants), location on rock, attendance patterns, diet or feeding behavior, and presence of predators. Prospecting common murres will be plotted by location on maps of the recolonization site. One or more aerial photographic censuses of the central California common murre colonies will be conducted annually between May and June. The censuses will be used to calculate annual breeding population sizes at the recolonization sites and nearby reference colonies in central California, compare trends between years, and assist in determining numbers of common murres not visible from the mainland or boats. Social attractants will be displayed through the breeding season until after common murres normally leave the breeding sites, usually in July. The decoys and audio equipment will be collected after all bird breeding on the rock has been completed. Equipment will be checked, cleaned, and replaced as necessary. The equipment will be redeployed during the following fall before common murres begin to frequent nesting islands. Monitoring of recolonization sites will continue annually after the first social attractants are deployed. The Trustee Council will reevaluate the recolonization efforts annually and revise as necessary. In addition, the use of techniques such as time-lapse photography and radiotelemetry to assist in monitoring birds will be investigated and used if technically and economically feasible. However, the placement and retrieval of such equipment in a way that does not cause undue disturbance to common murres or other seabirds and is secure from human vandalism or theft may be a problem.

The breeding behavior and colony attendance of common murres will be monitored at four nearby colonies in the Point Reyes National Seashore and/or the Gulf of the Farallones National Marine Sanctuary: Point Reyes, Point Resistance, Double Point Rocks, and Miller Point Rocks. These sites will serve as reference sites for the recolonization sites. Several variables will be monitored to allow comparison to recolonization sites, including population size and status, attendance patterns, timing, breeding phenology and success, behavior, interaction with other species, diet or feeding behavior, impacts of predators, human perturbations, and other disturbances. The population size and status would be determined using methods similar to those employed by Birkhead and Nettleship (1980), Gaston et al. (1983), Mudge (1988), and Hatch and Hatch (1989). Only subcolonies that can be viewed from a safe location will be selected. Reconnaissance work and preliminary observations and logistics would begin in spring/summer 1995. This work would consist of obtaining access permits to conduct work, selecting subcolonies to be studied, selecting plots within subcolonies, and conducting aerial surveys of the colonies. The monitoring period would parallel that followed at Devil's Slide and San Pedro rocks.

Winter and summer attendance, selected aspects of breeding biology of banded and unbanded common murres, and many of the same parameters measured at recolonization and nearshore reference sites will also be monitored at breeding sites at the South Farallon Islands. Established and new study plots, individually-banded birds, blinds, and other facilities will allow for the study of summer and winter attendance in more detail than at nearshore locations. Monitoring would include determining arrival dates, winter attendance patterns (breeding versus nonbreeding common murres), winter behavior of nonbreeding and breeding common murres, site fidelity of breeding common murres, reproductive success, population size, and impacts of predation. Monitoring at the South Farallon Islands will continue for 2 years and may be continued if needed to support refinement of recolonization methods or to facilitate interpretation of data at other colonies.

This restoration project will provide unique opportunities to enhance public knowledge concerning seabirds, seabird conservation, and the marine environment. Every attempt will be made to educate the public through presentations, news coverage, and other appropriate venues. Emphasis will be placed on greater awareness of seabird resources in the area, the problems

caused by oil pollution and oil spills, gill nets, and other anthropogenic factors as well as the restoration efforts conducted by the cooperating agencies, environmental organizations, and biologists. In addition, the location of the recolonization sites near San Francisco along scenic Highway 1 provides excellent viewing opportunities for the public and attracts large numbers of visitors each year. Therefore, opportunities for public outreach will be explored at this site.

Schedule

Spring-summer 1995: Begin preliminary work, including contracting, planning, logistics, and permits. Conduct aerial surveys of seabird colonies in central California in May or June to obtain baseline data, conduct aerial flights of Devil's Slide and San Pedro rocks to obtain aerial photos for mapping purpose, and record breeding common murre vocalizations at the Farallon NWR for use in the recolonization project. Select colonies and study plots to be monitored in the Point Reyes area. Conduct safety training for personnel as required.

Fall and winter 1995–1996: In fall 1995, conduct reconnaissance trips to recolonization sites in preparation for deployment of social attractants. Before December 1995, deploy social attractants and initiate daily observations of recolonization sites. Initiate daily observations of study plots in December 1995. Complete field season in August when common murres generally leave breeding colonies. Observations of study plots will continue from December through August for a minimum of 5 years to 10 years in order to provide necessary information to adequately evaluate the recolonization project. Work at the South Farallon Islands will begin the winter of 1995–1996 and will continue for a minimum of 2 years. Regular progress reports and an annual report will be submitted to the Trustee Council by the persons conducting work with funding from the APEX HOUSTON Trustee Council.

Spring 1996-winter 2004: Continue recolonization and monitoring efforts as necessary to accomplish project goals.

b. Castle and Hurricane Point Rocks Restoration: Restore common murres at Castle and Hurricane Point rocks using social attraction methods (decoys and recorded vocalizations).

Location: Castle and Hurricane Point rocks, Monterey County, California.

Justification: As described above, the recolonization of historic common murre colonies in central California will contribute to the reversal of the dramatic reduction of this seabird's historic geographic range. The 1986 APEX HOUSTON spill negatively impacted the breeding colonies that make up the southern half of the central California breeding range (Swartzman and Carter 1991). The Castle and Hurricane Point rocks colonies were severely impacted by the APEX HOUSTON spill based on locations of APEX HOUSTON oil slicks, depleted size of the Monterey colonies and subcolonies after the spill, and locations of recovery of oiled common murres during the spill (Swartzman and Carter 1991, Siskin et. al 1993). Adult common murres are known to attend breeding colonies during winter months at the Southeast Farallon Island in central California (Ainley and Boekelheide 1990, Sydeman 1993). Also, common murres have been observed attending the Castle and Hurricane Point rocks colonies during the winter (Carter, unpubl. data). Castle and Hurricane Point rocks were in the direct path of oil slicks occurring from the APEX HOUSTON spill (Swartzman and Carter 1991). In addition, approximately 1,600 common murres were recovered in Monterey Bay near these 2 colonies. As a result, the APEX HOUSTON spill was responsible for a severe reduction in numbers observed at these two colonies following the spill.

Currently, common murres occur on five rocks and the mainland at Castle Rocks and two rocks at Hurricane Point Rocks. Aerial surveys conducted during the 1994 breeding season indicate that common murre numbers at subcolonies have remained low since the APEX HOUSTON oil spill (Carter and Takekawa, unpubl. data). Each subcolony is comprised of less than a hundred to several hundred common murres, and the breeding status of these subcolonies is unknown (Carter and Takekawa, unpubl. data). Given the low numbers of common murres that occur at these subcolonies, it is possible that breeding success is limited. Due to the small size of the subcolonies and other factors (e.g., gill net fishing in Monterey Bay, El Nino events, future oil spills, and other human disturbances) the colonies at Castle and Hurricane Point rocks continue to be in danger of extirpation. These colonies are particularly important because they are at the current southern end of the range of the central California population as well as the southern extreme of the species' range in the Pacific Ocean. These colonies are in close proximity to each other and constitute the only active common murre colonies south of San Francisco, representing a large portion of the range of the central California common murre population. Given the current fragile condition of the overall central California common murre population and the lack of recovery over time (Ainley and Boekelheide 1990, Takekawa *et. al.* 1990, Swartzman and Carter 1991, Carter *et. al.* 1992, Ainley *et. al.* 1994), colonies once lost are not likely to be reestablished in the foreseeable future without human assistance. Based on established principles of conservation biology, if the colonies at Castle and Hurricane Point rocks are lost, the resulting reductions in the geographical range, numbers, breeding locations, and productivity of common murres further increase the risk of extinction of the entire central California population.

Proposed Action: The common murre colonies at the Castle and Hurricane Point rock complexes will be evaluated to determine the best means of employing social attractants at these locations. A minimum of 2 years would be required to determine appropriate methods. Both of these colonies are composed of several subcolonies on different rocks. Subcolonies will be examined to obtain a comprehensive understanding of colony dynamics in a severely depleted condition. Breeding population levels, reproductive success, attendance patterns, behavioral observations, and nesting locations will be determined at as many subcolonies as possible. Particular attention will be paid to prospecting birds within established subcolonies and at unoccupied rocks. In addition, all unoccupied rocks and potential mainland breeding habitats will be assessed for the use of social attractants to encourage common murre breeding. Habitat will be assessed for suitability to support a common murre subcolony, including such factors as slope, size, protection from human and other disturbance, surf conditions, and predation threats. The unoccupied rocks will be regularly monitored to detect prospecting common murres.

A phased approach to employing social attractants will be used to refine the use of social attractants on the colony. Criteria to be used to determine the use of social attractants include: loss of subcolonies or colonies, below normal reproductive success, lack of colony growth, limited availability of breeding sites in existing subcolonies, high numbers of prospecting common murres in existing subcolonies, presence of prospecting common murres in areas with no breeding, and population status at each colony. The use of social attractants would be employed at sites where it was deemed necessary to

encourage common murres to recolonize lost subcolonies or prospect and nest on unoccupied rocks. The goal would be to prevent colony loss without negatively impacting existing subcolonies. If, for any reason, social attractants are not deemed advisable after 2 years, the colonies at these sites will be evaluated for 3 more years. This monitoring will occur to ensure adequate reproductive success, colony survival, and recovery and, if necessary, to develop alternative restoration techniques.

This restoration project will provide unique opportunities to enhance public knowledge concerning seabirds, seabird conservation, and the marine environment. Every attempt will be made to educate the public through presentations, news coverage, and other appropriate venues. Emphasis will be placed on greater awareness of seabird resources in the area, the problems caused by oil pollution and oil spills, gill nets, and other anthropogenic factors as well as the restoration efforts conducted by the cooperating agencies, environmental organizations, and biologists. In addition, the location of the recolonization sites near Monterey along scenic Highway 1 provides excellent viewing opportunities for the public and attracts large numbers of visitors each year. As a result, informal public outreach will be conducted at the recolonization sites.

Schedule

Spring and Summer 1995: Preliminary work will begin, including selection of observation points, obtaining access permits, planning, and purchasing. Aerial surveys of breeding common murre colonies will be conducted in May or June to obtain baseline data. These surveys will be conducted in conjunction with aerial common murre surveys for central California. Observations of breeding colonies will continue each year from December 1995 until August 1997, at a minimum. In August 1997, the use of social attractants will be assessed to restore these common murre colonies. In fall 1997, social attractants will be deployed where suitable. These efforts will continue until at least 2004, unless success is achieved, or failure declared, prior to that date.

V. Common Murre Project Goals

The APEX HOUSTON oil spill killed an estimated 6,000 common murres, was a major factor in the eradication of the Devil's Slide Rock colony, and damaged colonies at Castle and Hurricane Point rocks. If the latter 2 colonies are lost, over 75 percent of the recent range of the central California common murre population will have been lost. The Trustees have selected restoration alternatives designed to restore common murres to colonies in the areas most severely affected by the spill. Both short-term and long-term goals have been established for this restoration project.

The short-term goal of this project is to restore common murres at historic breeding colonies in areas where colonies were extirpated or severely depleted by the APEX HOUSTON oil spill. The timeframe needed for common murres to become established at extirpated colonies is unknown but is suspected to be several years. Therefore, the Trustees will consider the short-term goal achieved if significant progress is made toward the establishment of 100 breeding pairs of common murres at the Devil's Slide Rock and San Pedro Rock colonies. The Trustees believe this goal can be achieved within 10 years if oceanic conditions are favorable for murre breeding during most of the years of the project.

The long-term goal is to restore the colonies to pre-spill population levels. Ultimately, this restoration project should aid in restoring the portion of the central California common murre population most affected by the APEX HOUSTON spill to its historic range, colony sizes, and reproductive potential. However, the timeframe needed for common murres to reach pre-spill population levels is unknown and is suspected to take several generations (i.e., more than 10 years). Thus, the accomplishment of the long-term goal of restoring the central California common murre population to its historic range and colony sizes is likely to occur only after the conclusion of the recolonization project. The Trustees believe that this is appropriate because the social facilitation that results from the presence and activity of the birds that were attracted to breed at the recolonization sites will take the place of the artificial stimuli provided by the decoys and recorded vocalizations, enabling long-term goals to be achieved without continued human intervention.

The Trustees plan to review the common murre restoration project at least annually at which time the effectiveness of the project and possible improvements will be considered. In addition, public comments will be taken and considered by the Trustee Council throughout the project. The annual review process may result in revisions to the plan.

VI. Common Murre Project Implementation

The U.S. Fish and Wildlife Service (Service) has been designated as Lead Trustee for the common murre recolonization project and will utilize staff and facilities of the San Francisco Bay National Wildlife Refuge Complex and the Sacramento Ecological Services Field Office to implement the project. The National Biological Service's Dixon Field Office will be asked to provide the Service with technical expertise and field support to assist in the implementation of this project through an inter-agency agreement. The Service will obtain additional assistance from one or more experts in seabird recolonization/restoration via contracts or cooperative agreements. Reference site work conducted at the South Farallon Islands may be accomplished through an existing cooperative agreement between the San Francisco Bay NWR Complex and the Point Reyes Bird Observatory. Other contracts or agreements may be developed as necessary to achieve project goals over the anticipated 10-year duration of this project.

VII. Environmental Compliance

The Service has determined that the project is categorically excluded from the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, according to the Department of Interior's Departmental Manual, 516 DM 6, Appendix I, 516 DM 2, Appendix I. Resource management activities such as the type described for this project, which include research, reintroduction of established species into their historic range, and small structures or improvements, are categorically excluded from NEPA. The U.S. Fish and Wildlife Service has prepared an Environmental Action Memorandum setting forth the basis for the categorical exclusion of this project.

The California Department of Fish and Game has also determined that the project is categorically exempt from the California Environmental Quality Act (CEQA), Cal. Pub. Resources Code 21000 et seq., and has filed a Notice of Exemption with the State Clearinghouse.

The California Coastal Commission staff has concurred with the Trustees negative determination made pursuant to 15 CFR 930.35(d) of the National Oceanic and Atmospheric Administration implementing regulations relative to the Coastal Zone Management Act.

VIII. Common Murre Restoration Project Budget

As part of the settlement, $4,916,430 has been allocated for common murre restoration. This amount, plus any interest earned, is available to fund the recolonization project for 10 years. A budget has been developed that lists the range of annual and cumulative costs anticipated for each major budgetary category (Table 1). Availability of sufficient money to fund the project through years 9 and 10 may depend on interest earnings, because the upper end of the range of anticipated project costs exceeds the amount of the settlement. A more detailed budget will be available following the completion of contracting procedures.

Major budget categories include equipment (boats, motors, decoys, photo and audio equipment, decoys, vehicles, etc.); operating costs (gas, aerial survey flights, travel, administrative support, etc.); salaries (salaries for agency personnel conducting recolonization project); contracts/agreements (seabird recolonization consultant, cooperative agreement for Farallon Islands work); public education/outreach (public meetings, press releases, press conferences, presentations, publications in popular and technical literature, etc.).

TABLE 1.—ESTIMATED MURRE PROJECT BUDGET

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Equipment	155,000–210,000	50,000–70,000	75,000–105,000	50,000–70,000	55,000–75,000	50,000–70,000	50,000–70,000	55,000–70,000	50,000–70,000	50,000–70,000
Operating Costs	130,000–175,000	125,000–170,000	120,000–160,000	120,000–160,000	120,000–160,000	120,000–160,000	120,000–160,000	120,000–160,000	120,000–160,000	120,000–160,000
Salaries	70,000–95,000	195,000–260,000	205,000–275,000	215,000–290,000	225,000–305,000	225,000–305,000	235,000–320,000	250,000–335,000	260,000–350,000	275,000–370,000
Contracts/Agreements	20,000–25,000	80,000–110,000	80,000–110,000	30,000–45,000	35,000–45,000	25,000–30,000	25,000–35,000	25,000–35,000	30,000–35,000	30,000–40,000
Public Education/Outreach	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000	5,000–10,000
Annual Total	380,000–515,000	455,000–620,000	485,000–660,000	420,000–575,000	440,000–595,000	425,000–575,000	435,000–595,000	455,000–610,000	465,000–625,000	480,000–650,000
Cumulative Project Total	380,000–515,000	835,000–1,135,000	1,320,000–1,795,000	1,740,000–2,370,000	2,180,000–2,965,000	2,605,000–3,540,000	3,040,000–4,135,000	3,495,000–4,745,000	3,960,000–5,370,000	4,440,000–6,020,000

IX. Responses to Comments

The Service received numerous oral and written comments at a public meeting held on November 17, 1994, in Sausalito, California, and during the public comment period that began with the November 4, 1994, **Federal Register** notice (**Federal Register**/Vol. 59, No. 213/55282). The Service appreciates the time and effort expended by the respondents.

A. General Comments Concerning This Plan

1. Length of the Public Comment Period. Comment: Several respondents stated that the initial 30-day public comment period was not sufficient to allow detailed review of the draft Plan.

Response: The Service extended the public comment period to 45 days.

2. Value of the Project. Comment: Many respondents expressed their belief that this project was an appropriate use of the settlement money and would help restore the bird species that was most impacted by the spill.

Response: The Service appreciates the support the public has shown for this project.

Comment: Several respondents said that the project was a waste of money and should not be implemented.

Response: In their legal complaints against the parties allegedly responsible for this oil spill, the State and Federal plaintiffs sought recovery for injuries to the natural resources under the trusteeship of the United States and the State of California. During the pendency of this action, the United States and the State, through their designated Natural Resource Trustees, proposed certain projects to restore natural resources injured as a direct result of the spill. These projects included the common murre recolonization project that is the subject of this Final Plan, as well as the marbled murrelet habitat acquisition project. The plaintiffs and defendants agreed, and the court by entering a Consent Decree found, that the proposed projects were reasonable and appropriate measures to restore the affected natural resources.

The Consent Decree states that the Trustees may make other use of the proceeds of the settlement if they ''determine that either of the proposed restoration projects are not feasible, practicable, or in the public interest.'' However, the Trustees have not obtained any convincing information through the public comment process, or through their own continued review of the project, to indicate that either of the proposed projects is not feasible, not practicable, or not in the public interest. On the contrary, nearly all of the public comments supported the project in concept and focused on technical details that could be improved or clarified. Therefore, the Trustee Council has authorized the Service to proceed with this project as described in this Final Plan.

3. Compliance With Environmental Regulations. Comment: Several respondents asked for clarification on how the Service will comply with the National Environmental Policy Act (NEPA) and other legislation designed to prevent adverse impacts of Federal projects on the environment.

Response: Preparation of an Environmental Impact Report or Environmental Assessment under NEPA is not required for this project because the restoration of species to their native range is an activity that is categorically exempt from NEPA and from its State equivalent, the California Environmental Quality Act. The Service has prepared and filed appropriate documentation of these exemptions. In addition, the Service has asked for and received a negative consistency determination from the California Coastal Commission, as required by the Coastal Zone Management Act.

The installation of decoys, tape recorders, cameras, and ladders at breeding colonies will take place during the non-breeding season to avoid disturbance of murres, cormorants, gulls, and other species protected by the Migratory Bird Treaty Act. Control of gulls and other predators is not currently a component of this project. The Service will obtain all necessary Federal, State, and local permits, and

access permission from private landowners, before initiating field work.

B. Comments Regarding Alternative Projects

Comment: Several respondents suggested that the murre recolonization project should be implemented as a pilot study at a reduced level of funding, and that the savings should be used to fund other projects, including: Rhinoceros auklet restoration, additional habitat acquisition for marbled murrelets, acquisition of property containing a common murre colony at Cape Vizcaino in Mendocino County, a fisheries task force to reduce mortality of seabirds in gill nets of the central California fishing industry, efforts to reduce impacts of chronic oil pollution on seabirds, gull control and other projects on the Farallon Islands, and genetic studies of Pacific coast murres.

Response: The draft Plan was revised and more detail has been provided in the Restoration Alternatives Considered and Selected section of the Final plan. The Service intends to approach this project in phases. The initial phase focuses on direct restoration activities at Devil's Slide and San Pedro rocks, and monitoring at other sites. The project will be scaled up to include implementation of recolonization techniques at Hurricane Rock and Castle Rock after several years of monitoring, if appropriate. This phased approach was implicit in the Draft Plan and has been further clarified in the Final Plan. A reduced level of effort will not provide sufficient information to evaluate whether the project is working, and diversion of money to other projects may not allow implementation of the project over the entire ten year period that may be necessary to achieve the project's goals. Consequently, the Service does not feel it would be acting in the public interest to shift large sums of money from the murre recolonization project to other projects at this time.

This decision does not mean that the Service or the Trustees reject the argument that some of the alternative projects that were suggested would be beneficial to natural resources injured by the Apex Houston Oil Spill. On the contrary, many of these projects, including rhinoceros auklet restoration and acquisition of the murre colony at Cape Vizcaino, were considered during settlement negotiations. Other suggested projects, including projects to reduce seabird mortality from gill nets and chronic oiling, are already underway with funding from other sources within the Trustee agencies. The murre recolonization project and the murrelet habitat acquisition project were given priority because the Trustees feel that these two projects best address restoration needs of local populations of the species that were most seriously impacted by the spill. The Alternatives Considered section of the Final Plan has been expanded to better address these concerns.

The Service intends to carefully manage project expenditures to stay within the proposed budget, and will attempt to realize savings wherever possible. In addition, the settlement money will be invested in an interest-bearing account within the Department of the Interior's Natural Resource Damage Assessment and Restoration fund. In general, the priority for use of any savings realized through this strategy will be continuation of murre restoration efforts beyond 10 years and acquisition of marbled murrelet nesting habitat, as per the Consent Decree. Other alternatives that are cost effective and have clear benefits to injured resources will receive future consideration from the Trustee Council on a case-by-case basis if their implementation will not compromise the objectives of the two main projects.

C. Comments Regarding Details of the Plan

1. Project Duration and Goals. Comment: Several respondents expressed concern that 10 years may not be long enough to achieve the goals of this project because murres have inherently low reproductive rates, usually do not breed until they are several years old, and may not breed in years when oceanic conditions are not favorable.

Response: The Service agrees that 10 years may be the minimum amount of time necessary to achieve the goal of recolonizing common murres at sites from which they have been extirpated. The long-term goal of restoring these colonies and the central California population to pre-spill numbers will almost certainly require more than 10 years. The Goals section was revised in the Final Plan to clarify the Service's short and long-term goals. The Service believes that the goals of the project can best be achieved through immediate implementation of recolonization efforts, and through continued efforts via other State and Federal programs to protect central California murres from human disturbance, chronic oiling, and entanglement in gill nets while the recolonization efforts are underway.

2. Disturbance of Murres and Other Nesting Seabirds. Comment: Several respondents cautioned the Service to either forego or proceed carefully with implementation of restoration efforts at Hurricane Rock and Castle Rock to avoid disturbing the remaining murres nesting at these sites.

Response: The Service agrees that unnecessary disturbance of the remaining murres nesting at these sites should be avoided. This concern was expressed in the Draft Plan and has been clarified in the Final Plan. Efforts at these sites will be limited to monitoring of behavior and reproductive success for the first 2 years of the project. After 2 years, the Service may deploy social attractants at these sites, but only where it is deemed necessary to encourage murres to recolonize lost subcolonies or suitable, unoccupied rocks.

Comment: Several respondents cautioned the Service to minimize disturbance of Brandt's cormorants and western gulls that nest at Devil's Slide Rock and other sites where recolonization is proposed.

Response: The Service agrees that disturbance of other nesting seabirds should be minimized during this project. Human disturbance will be minimized by deploying social attractants during the non-breeding season, conducting aerial surveys at appropriate heights to be determined in consultation with the Gulf of the Farallones National Marine Sanctuary and other agencies, and by making behavioral observations through telescopes located in blinds, on boats, or on the mainland, rather than in the middle of colonies.

In the few instances where formation of new murre colonies has been observed in central California, these new colonies were established within existing Brandt's cormorant colonies, possibly because these locations provided greater protection from gull predation (Ainley and Boekelheide 1990). Common murres and Brandt's cormorants also nest together at several colonies along the coasts of California and Oregon (Carter et al. 1992, Carter and Takekawa unpubl. data, R. Lowe pers. comm.). Because common murres can sometimes supplant cormorants and gulls from nesting areas, the potential exists for cormorant reproductive success to be reduced at recolonization sites (Ainley and Boekelheide 1990). However, the Service believes this problem can be minimized by deploying social attractants in such a way that murres obtain the benefits of proximity to nesting cormorants without usurping cormorant nest sites. Behavior and reproductive success of cormorants and gulls nesting on recolonization sites will be monitored to help determine the effect of murre recolonization on local seabird communities.

3. Farallon Islands Component of the Project. *Comment:* Several respondents asked for expansion or clarification of the scope of the Farallon Islands component of the project and pointed out that an understanding of the status and phenology of the large colony at Southeast Farallon Island is critical to restoration efforts at the smaller, nearshore colonies. Also, some respondents suggested that experiments with decoys be conducted at the Farallon Islands in order to refine and validate social attraction methodologies and protocols.

Response: The Service agrees that Farallon Islands are an important component to the conservation and understanding of the central California common murre population. Monitoring of common murres at the Farallon Islands, especially individually banded murres, will be important for evaluating the success of the recolonization efforts at the nearshore colonies and has been included in the Final Plan. The Service believes that the efforts described in the Final Plan are appropriate for the Farallon Islands, given National Wildlife Refuge management objectives and protocols. The Service does not believe that the colonies on the Farallon Islands merit greater emphasis in restoration than the nearshore colonies. The murre colonies on the Farallon Islands were impacted by the spill, but may still contain sufficient birds to accomplish any necessary social facilitation of breeding without human intervention.

Research on decoy placement and on effectiveness of combinations of auditory and visual attractants has been underway in Maine for several years (Schubel 1993). This research provides empirical data on numbers and densities of decoys sufficient to attract murres when combined with auditory stimuli. The Service believes that the information from Maine is sufficient to guide initiation of the Final Plan. Therefore, the Service believes it is not essential, at this time, to conduct methods-oriented research and experimental validation of common murre recolonization techniques at the Farallon Islands for the recolonization project to be successful. However, the Trustees will reevaluate the restoration projects and consider additional projects at least annually.

4. Additional Sites for Murre Recolonization. *Comment:* One respondent suggested that the Service could do more to expand the range of common murres in central California by using social attraction techniques to start a new colony at Bodega Rock in Sonoma County.

Response: The Service did not consider this site for murre recolonization because, as far as the Service is aware, it has no prior history of use for nesting by murres. Lack of prior use suggests that this may not be a suitable location for a murre colony.

5. Prey Resources for Common Murres. *Comment:* Some respondents questioned whether ecological resources, such as prey, might be insufficient to support growing murre populations and thereby could limit the success of the project.

Response: The Service is aware of this theory and would welcome any additional information for consideration on this subject at any time. Currently, the Service believes that insufficient information exists to conclude that prey resource limitations would preclude the success of this project. In addition, Pacific Sardines (*Sardinops sagax*) are beginning to recover in central California (Wolf 1992). Sardines had disappeared north of Point Conception by 1951, probably due to a combination of overfishing and an extended period of cold water (described in Ainley and Lewis 1974). Their recovery may strengthen food resources in the vicinity of the recolonization sites; for example, the once abundant sardines were believed to be an important food to larger seabirds, including cormorants and puffins (Ainley and Lewis 1974). In addition, more detail was added to the plan to clarify that common murre diet and feeding information would be collected at recolonization and reference sites where feasible, in order to gain more information on prey resources.

6. Public Outreach and Education. *Comment:* Several respondents emphasized the importance of making public outreach and education an integral part of the project.

Response: The Service agrees that public outreach and education should be an integral part of this project, and has allocated up to $10,000 annually for this purpose. Relevant public outreach and education opportunities will be sought throughout the project, and will be funded to the extent possible without compromising project goals.

7. Budget. *Comment:* Several respondents requested a more detailed budget.

Response: A more detailed budget has been included in the Final Plan. This budget contains anticipated ranges of annual costs for major budgetary categories for the duration of the project. Actual costs for cooperators and contractors will be known when negotiations are completed, and/or when contracts have been advertised and bids received.

8. Coordination With Other Trustee Councils. *Comment:* One respondent recommended that the Apex Houston Trustee Council coordinate its activities with the Trustee Councils that are guiding restoration projects for seabirds injured in other oil spills along the Pacific Coast.

Response: The Apex Houston Trustee Council will coordinate and communicate with other Trustee Councils.

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Dated: April 19, 1995.

Thomas Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 95–10277 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Draft Environmental Impact Statement for Mountain Goat Management, Olympic National Park, WA

AGENCY: National Park Service, Interior.

ACTION: Notice of extension of public review period.

SUMMARY: The comment period as specified in the official Notice of Availability (**Federal Register**, Vol. 60, No. 62, March 31, 1995, p. 16647) was to end May 31, 1995. This present Notice announces that the comment period has been extended until July 17, 1995.

DATES: Comments on the draft Environmental Impact Statement must be received by July 17, 1995.

ADDRESSES: Written comments should be submitted to the Superintendent, Olympic National Park, 600 E. Park Ave., Port Angeles, WA 98362.

FOR FURTHER INFORMATION CONTACT: Superintendent, Olympic National Park, at the above address or at telephone number (360) 452–4501.

Dated: April 18, 1995.

Rick L. Wagner,

Acting Associate Regional Director, Pacific Northwest Regional Office, National Park Service.

[FR Doc. 95–10347 Filed 4–26–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 498X)]

CSX Transportation, Inc.—Abandonment Exemption—in Henrico County and the City of Richmond, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of approximately 3.1 miles of rail line extending between milepost CA–88.25 at Ruffin in Henrico County, VA, and milepost CA–85.15 at Brown and 17th Streets in the City of Richmond, VA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 27, 1995. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 8, 1995; petitions to stay must be filed by May 12, 1995; requests for a public use condition must be filed by May 17, 1995; and petitions to reopen must be filed by May 22, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 498X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423, and (2) Charles M. Rosenberger, Counsel for CSXT, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW, Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: April 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–10332 Filed 4–26–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on January 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Software Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: NTT Data Communications Systems Corporation, Tokyo, JAPAN; and Toshiba Corporation, Tokyo, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On May 11, 1994, OSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45009).

The last notification was filed with the Department on November 7, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 16, 1995 (60 FR 9052).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–10307 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on March 7, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), X Consortium, Inc. (the ''Corporation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of the Corporation: Frame Technology Corp., San Jose, CA; and Shiman Associates, Inc., Brookline, MA. The following are no longer members of the Corporation: Congruent Corp., New York, NY; IXI Ltd., Cambridge, ENGLAND; Korean Advanced Institute of Science and Technology, Seoul, REPUBLIC OF KOREA; Kubota Corp., Santa Clara, CA; Labtam Australia, Braeside, AUSTRALIA; Nippon Telegraph and Telephone Corp., Tokyo, JAPAN; User Interface Technologies Ltd., Cambridge, ENGLAND; VisionWare Ltd., Leeds, ENGLAND; and Visix Software, Inc., Reston, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1993 (58 FR 59737).

The last notification was filed with the Department on December 8, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 1995 (FR 14004).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–10309 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Department of Commerce Advanced Technology Program (ATP)/National Institute of Standards and Technology (NIST) Project No. 94–02–0048 ''Manufacturing Composite Structures for the Offshore Oil Industry''

Notice is hereby given that, on March 17, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Westinghouse Electric Corporation, acting on behalf of the participants in the ATP/NIST Project No. 94–02–0048, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project are: ABB Vetco Gray Inc., Houston, TX; Hercules Inc., Wilmington, DE; Reading & Bates Development Company, Houston, TX; Texaco, Inc., Belaire, TX; The Texas Engineering Experiment Station, College Station, TX; and Westinghouse Electric Corporation, Sunnyvale, CA.

The nature and objective of the research program performed in accordance with the ATP/NIST Project No. 94–02–0048 is to develop advanced composite technology which will lead to the commercialization of affordable high quality advanced tubular structures for the Offshore Oil Industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–10310 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 94–06

Notice is hereby given that, on March 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 94–06 have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Exxon Research and Engineering Company, Florham Park, NJ; British Petroleum Oil Company, Cleveland, OH; Conoco Inc., Ponca City, OK; Shell Development Company, Houston, TX; Texaco Inc., Beacon, NY; Chevron Research and Technology Company, Richmond, CA; Amoco Corporation, Naperville, IL.

The nature and objective of the research program performed in accordance with PERF Project 94–06 is to work on the development of approaches, data, and technologies that lead to cost effective use of bioremediation as a site remediation technology as applied to petroleum, petrochemical and chemical industry facilities.

Information about participation in Project 94–06 may be obtained by contacting Paul Becker, Exxon Research and Engineering Company, Florham Park, NJ.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–10308 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Research and Development Venture Agreement for Seismic Technology

Notice is hereby given that, on February 10, 1995, pursuant to the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Paul W. Pendorf, President of XXsys Technologies, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: XXsys Technologies, Inc./ Composite Retrofit Corp., San Diego, CA; Hercules Incorporated, Wilmington, DE; and Trans-Science Corp., La Jolla, CA. The general area of planned activity is to develop and demonstrate low cost manufacturing process and design/ sensor technologies for seismic upgrading of bridge columns. An award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce will partially fund this joint Research and Development Activity.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–10312 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Pipeline Monitoring for Third-Party Damage

Notice is hereby given that, on February 21, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Tokyo Gas Company, LTD., Yokohama JAPAN; Osaka Gas Company, Ltd., Osaka, JAPAN; and Toho Gas Company, Ltd., Nagoya JAPAN. The general areas of planned activities are to determine what technologies are available for monitoring of damage to gas pipelines by conducting a literature survey concerning detection of third-party damage to pipelines, sensing systems being utilized and signal processing technologies available in order to advise the participants of such a system's detection capabilities to display the location of damage, to announce the detection of damage, and to indicate the grade or degree of damage which has occurred; by exploring related detected technologies and by evaluating the information gathered in order to recommend one or more technical approaches for further research and system development.

Membership in the program is closed and SwRI intends to file additional written notification if there are any changes in planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–10314 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on March 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 et seq. (''the Act''), the Petroleum Environmental Research Forum (''PERF'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Murphy Oil USA, Inc., has terminated its membership with PERF.

No other changes have been made in either the membership or planned activities of PERF. Membership remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on January 10, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 1, 1995 (60 FR 11115).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–10311 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 24, 1995, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I.
Difenoxin (9168)	I.
Methylphenidate (1724)	II.
Codeine (9050)	II.
Oxycodone (9143)	II.
Hydromorphone (9150)	II.
Diphenoxylate (9170)	II.
Hydrocodone (9193)	II.
Levorphanol (9220)	II.
Meperidine (9230)	II.
Meperidine intermediate-A (9232)	II.
Meperidine intermediate-B (9233)	II.
Meperidine intermediate-C (9234)	II.
Methadone (9250)	II.
Methadone intermediate (9254)	II.
Morphine (9300)	II.
Oxymorphone (9652)	II.
Alfentanil (9737)	II.
Sufentanil (9740)	II.
Carfentanil (9743)	II.
Fentanyl (9801)	II.

The firm plans to manufacture the listed control substances in bulk supply final dosage form for manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 30, 1995.

Dated: April 14, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–10286 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated February 17, 1995, and published in the **Federal Register** on March 1, 1995, (60 FR 11116), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), as basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: April 10, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–10287 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Employment Authorization Document.

(2) Form I–765. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary = Individuals or households. Others = None. The information collected on this form will be used solely by the Immigration and Naturalization Service to determine eligibility for evidence of an employment authorization document pursuant to regulatory authority under 8 CFR 274 a. 12.

(4) 1,000,000 annual respondents at 3.416 hours per response.

(5) 3,416,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: April 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

Impact Statement

These revised instructions are being published to alert the applicant of modifications to current filing procedures for the INS Form I–765. In the past, many aliens were required to be physically present in an INS office for production of the employment authorization document. At that time an immigration official would take the necessary photographs, obtain the applicant's signature, and physically look at other documents to ensure eligibility for employment authorization.

Under this new filing procedure 75% (percent) of applicants will now be able to mail in their applications, and photographs along with copies of relating documents in support of the request for employment authorization into an INS central location for processing.

This process should improve efficiency of the I–765 process, improve the delivery of services to the applicant (public), maximize resources, tighten inventory control, and ensure increased security and the integrity of EAD production.

We believe that these new guidelines provide clear directions to applicants concerning who can file, how to file, where to file and when to file their applications for employment authorization documents.

BILLING CODE 4410–10–M

INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION Form I-765

The Immigration and Naturalization Service (INS) recommends that you retain a copy of your completed application for your records.

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PART 1. GENERAL.

Purpose of the Application. Certain aliens who are temporarily in the United States may file a Form I-765, Application for Employment Authorization, to request an Employment Authorization Document (EAD). Other aliens who are authorized to work in the United States without restrictions should also use this form to apply to the INS for a document evidencing such authorization. Please review Part 2 ELIGIBILITY CATEGORIES to determine whether you should use this form.

If you are a Lawful Permanent Resident, a Conditional Resident, or a nonimmigrant authorized to be employed with a specific employer under 8 CFR 274a.12(b), please do **NOT** use this form.

DEFINITIONS.

Employment Authorization Document (EAD): Form I-688; Form I-688A; Form I-688B; or any successor document issued by the INS as evidence that the holder is authorized to work in the United States.

Renewal EAD: an EAD issued to an eligible applicant at or after the expiration of a previous EAD issued under the same category.

Replacement EAD: an EAD issued to an eligible applicant when the previously issued EAD has been lost, stolen, mutilated, or the previously issued card contains erroneous information, such as a misspelled name.

Interim EAD: an EAD issued to an eligible applicant when the INS has failed to adjudicate an application within 90 days of receipt of a properly filed EAD application or within 30 days of a properly filed initial EAD application based on an asylum application filed on or after January 4, 1995. The interim EAD will be granted for a period not to exceed 240 days and is subject to the conditions noted on the document.

PART 2. ELIGIBILITY CATEGORIES.

The INS adjudicates a request for employment authorization by determining whether an applicant has submitted the required information and documentation, and whether the applicant is eligible. In order to determine your eligibility, you must identify the category in which you are eligible and fill in that category in question 16 on the Form I-765. Enter only **one** of the following category numbers on the application form.

NOTE: **Category (c)(13) is no longer available.** You may not renew or replace your EAD based on (c)(13). If you have an EAD based on that category, please review the categories below to determine if you are eligible under another category.

APPLICATIONS TO BE FILED AT SERVICE CENTERS.

Asylee, (granted asylum)–(a)(5). File your EAD application with a copy of the INS letter granting you asylum. It is not necessary to apply for an EAD as an asylee until 90 days before the expiration of your current EAD.

Refugee–(a)(3). File your EAD application with either a copy of your Form I-590, Registration for Classification as Refugee, approval letter or a copy of a Form I-730, Refugee/Asylee Relative Petition, approval notice.

Paroled as a Refugee–(a)(4). File your EAD application with a copy of your Form I-94, Departure Record.

Asylum Applicant (with a pending asylum application) who Filed for Asylum on or after January 4, 1995–(c)(8). If you filed a Form I-589, Request for Asylum and for Withholding of Deportation, on or after January 4, 1995, you must wait at least 150 days before you are eligible to apply for an EAD. If you file your EAD application early, it will be denied and you will have to file a new application. File your EAD application with:

- A copy of the INS acknowledgement mailer which was mailed to you; or
- Other evidence that your Form I-589 was filed with the INS; or
- Evidence that your Form I-589 was filed with an Immigration Judge at the Executive Office for Immigration Review (EOIR); or
- Evidence that your asylum application remains under administrative or judicial review.

Asylum Applicant (with a pending asylum application) who Filed for Asylum and Withholding of Deportation Prior to January 4, 1995 and is *NOT* in Exclusion or Deportation Proceedings–(c)(8). You may file your EAD application at any time; however, it will only be granted if the INS finds that your asylum application is not frivolous. File your EAD application with:

- A complete copy of your previously filed Form I-589; and
- A copy of your INS receipt notice; or
- A copy of the INS acknowledgement mailer; or
- Evidence that your Form I-589 was filed with EOIR; or
- Evidence that your asylum application remains under administrative or judicial review; or
- Other evidence that you filed an asylum application.

Asylum Applicant (with a pending asylum application) who Filed an Initial Request for Asylum Prior to January 4, 1995, and *IS IN* Exclusion or Deportation Proceedings–(c)(8). If you filed your Request for Asylum and Withholding of Deportation (Form I-589) prior to January 4, 1995 and you ARE IN exclusion or deportation proceedings, file your EAD application with:

- A date-stamped copy of your previously filed Form I-589; or
- A copy of Form I-221, Order to Show Cause and Notice of Hearing, or Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge; or
- A copy of EOIR-26, Notice of Appeal, date stamped by the Office of the Immigration Judge; or
- A date-stamped copy of a petition for judicial review or for *habeas corpus* issued to the asylum applicant; or
- Other evidence that you filed an asylum application with EOIR.

Asylum Applicant under the ABC Settlement Agreement–(c)(8). If you are an El Salvadoran or Guatemalan national eligible for benefits under the ABC settlement agreement, American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991), there are special instructions applicable to filing your Form I-765 which supplement these instructions. These instructions and the application can be obtained by asking for an "ABC packet" at your local INS office or by calling 1-800-755-0777.

Deferred Enforced Departure (DED)/Extended Voluntary Departure–(a)(11). File your EAD application with evidence of your identity and nationality.

F-1 Student Seeking Optional Practical Training in an Occupation Directly Related to Studies–(c)(3)(i). File your EAD application with a Certificate of Eligibility of Nonimmigrant (F-1) Student Status (Form I-20 A-B/I-20 ID) endorsed by a designated school official within the past 30 days.

F-1 Student Offered Off-Campus Employment under the Sponsorship of a Qualifying International Organization–(c)(3)(ii). File your EAD application with the international organization's letter of certification that the proposed employment is within the scope of its sponsorship and a Certificate of Eligibility of Nonimmigrant (F-1) Student Status–For Academic and Language Students (Form I-20 A-B/I-20 ID) endorsed by the designated school official within the past 30 days.

F-1 Student Seeking Off-Campus Employment Due to Severe Economic Hardship–(c)(3)(iii). File your EAD application with Form I-20 A-B/I-20 ID, Certificate of Eligibility of Nonimmigrant (F-1) Student Status–For Academic and Language Students; Form I-538, Certification by Designated School Official, and any evidence you wish to submit, such as affidavits, which detail the unforeseen economic circumstances that cause your request, and evidence you have tried to find off-campus employment with an employer who has filed a labor and wage attestation.

J-2 Spouse or Minor Child of an Exchange Visitor–(c)(5). File your EAD application with a copy of your J-1's (principal alien's) Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66). You must submit a written statement, with any supporting evidence showing, that your employment is not necessary to support the J-1 but is for other purposes.

M-1 Student Seeking Practical Training after Completing Studies–(c)(6). File your EAD application with a completed Form I-538, Application by Nonimmigrant Student for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment, Form I-20 M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status–For Vocational Students endorsed by the designated school official within the past 30 days.

Dependent of CCNAA E-1 Nonimmigrant–(c)(2). File your EAD application with the required certification from the American Institute in Taiwan if you are the spouse, or unmarried child, of an E-1 employee of the Coordination Council for North American Affairs.

Dependent of NATO Personnel–(c)(7). File your EAD application with a letter from the Department of Defense or NATO/SACLANT verifying your principal alien's status, your status, and your relationship to your principal alien.

N-8 or N-9 Nonimmigrant–(a)(7). File your EAD application with the required evidence listed in Part 3.

Family Unity Program--(a)(13). File your EAD application with a copy of the approval notice, if you have been granted status under this program. You may choose to file your EAD application concurrently with your Form I-817, Application for Voluntary Departure under the Family Unity Program. The INS may take up to 90 days from the date upon which you are granted status under the Family Unity Program to adjudicate your EAD application. If you were denied Family Unity status solely because your legalized spouse or parent first applied under the Legalization/SAW programs after May 5, 1988, file your EAD application with a new Form I-817 application and a copy of the original denial. However, if your EAD application is based on continuing eligibility under (c)(12), please refer to **Deportable Alien Granted Voluntary Departure.**

K-1 Nonimmigrant Fiance(e) of U.S. Citizen or K-2 Dependent--(a)(6). File your EAD application if you are filing within 90 days from the date of entry. This EAD cannot be renewed. Any EAD application other than for a replacement must be based on your pending application for adjustment under (c)(9).

Citizen of Micronesia or the Marshall Islands or Palau--(a)(8). File your EAD application if you were admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories.

B-1 Nonimmigrant who is the personal or domestic servant of a nonimmigrant employer--(c)(17)(i). File your EAD application with:

- Evidence from your employer that he or she is a B, E, F, H, I, J, L, M, O, P, R or TN nonimmigrant and you were employed for at least one year by the employer before the employer entered the United States or your employer regularly employs personal and domestic servants and has done so for a period of years before coming to the United States; and
- Evidence that you have either worked for this employer as a personal or domestic servant for at least one year or, evidence that you have at least one year's experience as a personal or domestic servant; and
- Evidence establishing that you have a residence abroad which you have no intention of abandoning.

B-1 Nonimmigrant Domestic Servant of a U.S. Citizen--(c)(17)(ii). File your EAD application with:

- Evidence from your employer that he or she is a U.S. Citizen; and
- Evidence that your employer has a permanent home abroad or is stationed outside the United States and is temporarily visiting the United States or the citizen's current assignment in the United States will not be longer than four (4) years; and
- Evidence that he or she has employed you as a domestic servant abroad for at least six (6) months prior to your admission to the United States.

B-1 Nonimmigrant Employed by a Foreign Airline--(c)(17)(iii). File your EAD application with a letter, from the airline, fully describing your duties and indicating that your position would entitle you to E nonimmigrant status except for the fact that you are not a national of the same country as the airline or because there is no treaty of commerce and navigation in effect between the United States and that country.

APPLICATIONS TO BE FILED AT LOCAL INS OFFICES.

Temporary Protected Status (TPS)--(a)(12). File your EAD application with Form I-821, Application for Temporary Protected Status.

- Initial TPS-based application only, include evidence of identity and nationality as required by the Form I-821 instructions.
- Extension of TPS status, include a copy (front and back) of your last available TPS document: EAD, Form I-94 or approval notice.
- Registration for TPS only without employment authorization, file the Form I-765, Form I-821, and a letter indicating that this form is for registration purposes only. No fee is required for the Form I-765 filed as part of TPS registration. (Form I-821 has separate fee requirements.)

Applying for Temporary Protected Status (TPS)/Temporary Treatment Benefits--(c)(19). ***File your EAD application with your TPS application, Form I-821.*** If you are using this application to register for TPS and do not want to work in the United States, you must submit a letter indicating this application is for registration purposes only. No fee is required to register.

Granted Withholding of Deportation--(a)(10). File your EAD application with a copy of the Immigration Judge's order. It is not necessary to apply for a new EAD until 90 days before the expiration of your current EAD.

Dependent of A-1 or A-2 Foreign Government Officials--(c)(1). File your EAD application with a Form I-566, Application for Employment by Spouse or Unmarried Dependent Son or Daughter of A-1 or A-2 Official or Employee of Diplomatic or Consular Establishment or G-4 Officer or Employee of International Organization, with the Department of State endorsement.

Dependent of G-1, G-3 or G-4 Nonimmigrant--(c)(4). File your EAD application with a Form I-566, Application for Employment by Spouse or Unmarried Dependent Son or Daughter of A-1 or A-2 Official or Employee of Diplomatic or Consular Establishment or G-4 Officer or Employee of International Organization, with the Department of State endorsement if you are the dependent of a qualifying G-1, G-3 or G-4 officer of, representative to, or employee of an international organization and you hold a valid nonimmigrant status.

Adjustment Applicant–(c)(9). File your EAD application with a copy of the receipt notice or other evidence that your Form I-485, Application for Permanent Residence, is pending. You may file Form I-765 together with your Form I-485.

Applicant for Suspension of Deportation–(c)(10). File your EAD application with evidence that your Form I-256A, Application for Suspension of Deportation, is pending.

Paroled in the Public Interest–(c)(11). File your EAD application if you were paroled into the United States for emergent reasons or reasons strictly in the public interest.

Deportable Alien Granted Voluntary Departure–(c)(12). File your EAD application with a copy of the order or notice granting voluntary departure, and evidence establishing your economic need to work.

Deferred Action–(c)(14). File your EAD application with a copy of the order, notice or document placing you in deferred action and evidence establishing economic necessity for an EAD.

Adjustment Applicant Based on Continuous Residence Since January 1, 1972–(c)(16). File your EAD application with your Form I-485, Application for Permanent Residence; a copy of your receipt notice; or other evidence that the Form I-485 is pending.

Final Order of Deportation–(c)(18). File your EAD application with a copy of the order of supervision and a request for employment authorization which may be based on, but not limited to the following:

- Existence of economic necessity to be employed;
- Existence of a dependent spouse and/or children in the United States who rely on you for support; and
- Anticipated length of time before you can be removed from the United States.

PART 3. REQUIRED DOCUMENTATION WITH EACH APPLICATION.

All applications must be filed with the documents required below, in addition to the evidence required for the category listed in Part 2 ELIGIBILITY CATEGORIES, with fee, if required.

If you are required to show economic necessity for your category (See Part 2), submit a list of your assets, income and expenses.

Please assemble the documents in the following order:

Your application with the filing fee. See Part 4 FEE for details.

If you are mailing your application to the INS, you must also submit:

- Form I-765 Signature Card. If one is not enclosed with your application, ask your local INS office for one. Sign the card in the blue box marked "signature". Your signature must fit within the blue box. DO NOT fold this card when you mail your application.
- A copy of Form I-94 Departure Record (front and back), if available.
- A copy of your last EAD (front and back).
- 2 photos with a white background taken no earlier than 30 days before submission to the INS. They should be unmounted; printed on thin paper; glossy; and unretouched. The photos should show a three-quarter front profile of the right side of your face, with your right ear visible. Your head should be bare unless you are wearing a headdress as required by a religious order to which you belong. The photo should not be larger than 1 ½ X 1 ½ inches, with the distance from the top of the head to just below the chin about 1¼ inches. Lightly print your name and your A#, if known, on the back of each photo with a pencil.

PART 4. FEE.

Applicants must pay a fee of $70 to file this form unless noted below. If a fee is required, it will not be refunded. Pay in the exact amount. Checks and money orders must be payable in U.S. currency. Make check or money order payable to "Immigration and Naturalization Service." If you live in Guam make your check or money order payable to "Treasurer, Guam." If you live in the U.S. Virgin Islands make your check or money order payable to "Commissioner of Finance of the Virgin Islands." There will be an additional charge if your check is not honored.

Please do **not** send cash in the mail.

Initial EAD: If this is your initial application and you are applying under one of the following categories, a filing fee is not required:

- (a)(3) Refugee;
- (a)(4) Paroled as Refugee;
- (a)(5) Asylee;
- (a)(7) N-8 or N-9 nonimmigrant;
- (a)(8) Citizen of Micronesia, Marshall Islands or Palau.
- (a)(10) Granted Withholding of Deportation;
- (a)(11) Deferred Enforced Departure;
- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel; or
- (c)(8) Applicant for asylum [an applicant filing under the special ABC procedures must pay the fee].

Renewal EAD: If this is a renewal application and you are applying under one of the following categories, a filing fee is not required:

- (a)(8) Citizen of Micronesia, Marshall Islands, or Palau.
- (a)(10) Granted Withholding of Deportation;
- (a)(11) Deferred Enforced Departure; or
- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel.

Replacement EAD: If this is your replacement application and you are applying under one of the following categories, a filing fee is not required:

- (c)(1) or (c)(4) Dependent of certain foreign government or international organization personnel.

You may be eligible for a fee waiver under 8 CFR 103.7(c).

The INS will use The Community Service Administration Income Poverty Guidelines ("Poverty Guidelines") found at 45 CFR 1060.2 as the basic criteria in determining the applicant's eligibility when economic necessity is identified as a factor.

The Poverty Guidelines will be used as a guide, but not as a conclusive standard, in adjudicating fee waiver requests for employment authorization applications requiring a fee.

PART 5. WHERE TO FILE.

If your response to question 16 is:

(a)(3), (a)(4), (a)(5), (a)(7), or (a)(8)

mail your application to:

INS Service Center
P.O. Box 87765
Lincoln, NE 68501-7765

If your response to question 16 is:

(a)(6), (a)(11), (a)(13),
(c)(2), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), (c)(5), (c)(6), (c)(7), (c)(8),
(c)(17)(i), (c)(17)(ii), or (c)(17)(iii)

mail your application based on your address to the appropriate Service Center:

If you live in: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia or the U.S. Virgin Islands, mail your application to:

INS Service Center
P.O. Box 9765
St. Albans, VT 05479-9765

If you live in: Arizona, California, Guam, Hawaii or Nevada, mail your application to:

INS Service Center
P.O. Box 10765
Laguna Niguel, CA 92607-0765

If you live in: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, N. Carolina, Oklahoma, S. Carolina, Tennessee or Texas, mail your application to:

INS Service Center
P.O. Box 152122, Department A
Irving, TX 75015-2122

If you live elsewhere in the U.S., mail your application to:

INS Service Center
P.O. Box 87765
Lincoln, NE 68501-7765

If your response to question 16 is:

(a)(10), (a)(12),
(c)(1), (c)(4), (c)(10), (c)(11), (c)(12), (c)(14), (c)(16),
(c)(18), or (c)(19)

apply at the local INS office having jurisdiction over your place of residence.

If your response to question 16 is (c)(9), file your application at the same local INS office or Service Center where you submitted your adjustment application.

If your response to question 16 is (c)(8) under the special ABC filing instructions and you are filing your asylum and EAD applications together, mail your application to the office where you are filing your asylum application.

PART 6. PROCESSING INFORMATION.

Acceptance. An application filed without the required fee, evidence, signature or photographs (if required) will be returned to you as incomplete. You may correct the deficiency and resubmit the application; however, an application is not considered properly filed until the INS accepts it. If your application is complete and filed at an INS Service Center, you will be mailed a Form I-797 receipt notice.

Decision on your application.

- **Approval.** If approved, your EAD will either be mailed to you or you may be required to appear at your local INS office to pick it up.
- **Request for evidence.** If additional information or documentation is required, a written request will be sent to you specifying the information or advising you of an interview.
- **Denial.** If your application cannot be granted, you will receive a written notice explaining the basis of your denial.

PART 7. OTHER INFORMATION.

Penalties for Perjury. All statements contained in response to questions in this application are declared to be true and correct under penalty of perjury. Title 18, United States Code, Section 1546, provides in part:

> . . . Whoever knowingly makes under oath, or as permitted under penalty of perjury under 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the United States Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. 1324c. Under 8 U.S.C. 1324c, a person subject to a final order for civil document fraud is deportable from the United States and may be subject to fines.

Authority for Collecting this Information. The authority to require you to file Form I-765, Application for Employment Authorization, when applying for employment authorization is found at 8 U.S.C. 274A(b)(1)(C)(iii). Information you provide on your Form I-765 is used to determine whether you are eligible for employment authorization and for the preparation of your Employment Authorization Document if you are found eligible. Failure to provide all information as requested may result in the denial or rejection of this application. The information you provide may also be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies during the course of the INS investigations.

Paperwork Reduction Act. The Immigration and Naturalization Service (INS) tries to create forms and instructions which are accurate and easily understood. Often this is difficult because immigration law can be very complex. The public reporting burden for this form is estimated to average three (3) hours and twenty-five (25) minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The INS welcomes your comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service, 425 Eye Street, Room 5307, Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project: OMB No. 1115-0163, Washington, D.C. 20503.

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0163
Application for Employment Authorization

Do Not Write In This Block — **Please Complete Both Sides of Form**

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under 274a.12 _____		

☐ Application Approved. Employment Authorized / Extended (Circle One) _____ (Date).
until _____ (Date).
Subject to the following conditions: _____
☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c) (14), (18) and 8 CFR 214.2(f)

I am applying for: ☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Renewal of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)
2. Other Names Used (Include Maiden Name)
3. Address in the United States (Number and Street) (Apt. Number)
(Town or City) (State/Country) (ZIP Code)
4. Country of Citizenship/Nationality
5. Place of Birth (Town or City) (State/Province) (Country)
6. Date of Birth (Month/Day/Year)
7. Sex ☐ Male ☐ Female
8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced
9. Social Security Number (Include all Numbers you have ever used)
10. Alien Registration Number (A-Number) or I-94 Number (if any)
11. Have you ever before applied for employment authorization from INS?
☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)
Results (Granted or Denied - attach all documentation)
12. Date of Last Entry into the U.S. (Month/Day/Year)
13. Place of Last Entry into the U.S.
14. Manner of Last Entry (Visitor, Student, etc.)
15. Current Immigration Status (Visitor, Student, etc.)
16. Go to Part 2 of the instructions, Eligibility Categories. In the space below, place the letter and number of the category you selected from the instructions (For example, (a)(8), (c)(17)(iii), etc.).
Eligibility under 8 CFR 274a.12
( ) ( ) ( )

Complete the reverse of this form before signature.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the reverse of this form and have checked the appropriate block, which is identified in item #16, above.

Signature Telephone Number Date

Signature of Person Preparing Form If Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

Form I-765 (Rev. 04-12-95) N Page 7

[FR Doc. 95–9993 Filed 4–26–95; 8:45 am]
BILLING CODE 4410–10–C

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on April 17, 1995, a Consent Decree in *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, was lodged with the United States District Court for the District of Delaware and the United States Bankruptcy Court for the District of Delaware.

The United States, on behalf of the U.S. Environmental Protection Agency, filed a third amended complaint against the thirty-one defendants who are signatories to the Consent Decree under Section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, with respect to the Delaware Sand & Gravel Superfund Site (''DS&G Site'') located in New Castle County, Delaware. Under the Consent Decree, Defendants have agreed to perform the remedy selected by EPA under CERCLA for the Site, as defined in the Consent Decree, which involves soil vapor extraction/bioremediation of contaminated soils at the DS&G Site. Defendants have also agreed to reimburse DPA for past response costs in the amount of $4,328,335.35 and the state of Delaware in the amount of $196,644.45, and reimburse the United States for various future response costs, including the costs of oversight of the remedial action to be performed under the Consent Decree and all costs of enforcement by the Department of Justice after April 1988.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, Ref. No. 90–11–2–298. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Delaware, Chemical Bank Plaza, 1201 Market Street, Suite 100, Wilmington, Delaware 19899. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy of the settlement agreement by mail, please enclose a check in the amount of $33.00 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–10313 Filed 4–26–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30,793]

Phillips Petroleum Company, Odessa, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Phillips Petroleum Company, Odessa, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,793; Phillips Petroleum Company
Odessa, Texas (April 14, 1995)

Signed at Washington, DC, this 19th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10362 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

Arco Oil and Gas Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA–W–29,431A ARCO NATURAL GAS MARKETING, DALLAS, TX; TA–W–29,431B ARCO NATURAL GAS MARKETING, HOUSTON, TX, A/K/A VASTAR GAS MARKETING, INC.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 13, 1994. The notice was published in the **Federal Register** on May 11, 1994 (59 FR 24483).

The certification was subsequently amended June 20, 1994, and again on August 22, 1994. The amended notices were published in the **Federal Register** June 30, 1994 (59 FR 33778) and September 2, 1994 (59 FR 45709), respectively.

The Department is again amending the certification. The Department has been notified by the company that ARCO Natural Gas Marketing has changed its corporate name to Vastar Gas Marketing, Inc.

The intent of the Department's certification is to include all workers of Arco Oil and Gas who were affected by increased imports of crude oil and natural gas. The amended notice applicable to TA–W–29,431A and TA–W–29,431B is hereby issued as follows:

''All workers of ARCO Natural Gas Marketing, a/k/a Vastar Gas Marketing, Inc., Dallas and Houston, Texas (TA–W–29,431A and TA–W–29,431B) who became totally or partially separated from employment on or after February 21, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 14th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10354 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 433; 30, 433A]

IMC Magnetics Corp., Eastern Division, Hauppauge, NY and New England Alloys, Inc., Lawrence, MA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1994, applicable to all workers of the subject firm. The certification notice was published in the Federal Register on January 3, 1995 (60 FR 149).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that New England Alloys, Inc., Lawrence, Massachusetts is a subsidiary of IMC Magnetics Corporation and ceased operations on March 31, 1995 because of a reduced demand for its components by IMC Magnetics.

Accordingly, the Department is amending the certification to include all

workers of New England Alloys, Inc., in Lawrence, Massachusetts.

The amended notice applicable to TA–W–30, 433 is hereby issued as follows:

''All workers of IMC Magnetics Corporation, Eastern Division, Hauppauge, New York and New England Alloys, Inc., in Lawrence, Massachusetts who became totally or partially separated from employment on or after October 12, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C., this 14th day of April 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10356 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,792]

Pennzoil Products Company (Oil & Gas Segment) Bradford, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 10, 1995, applicable to all workers of the subject firm.

The certification notice will soon be published in the **Federal Register**.

The Department, on its own motion, reviewed the certification for workers of the subject firm. The findings show that the earliest possible impact date could be February 2, 1994. Accordingly, the Department is amending the certification by inserting a new impact date of February 2, 1994.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,792 is hereby issued as follows:

''All workers of Pennzoil Products Company (Oil & Gas Segment), Bradford District, Bradford, Pennsylvania who became totally or partially separated from employment on or after February 2, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 18th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10359 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 8, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 8, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 17th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Industrial Ceramics Inc (UE)	Derry, PA	04/17/95	03/27/95	30,916	Electrical Porcelain Insulators.
Brunswick Defense (Co)	Costa Mesa, CA	04/17/95	04/02/95	30,917	Naval Aircraft Decoys.
Charland Sportswear, Faymore Mfg (ILGWU).	Confluence, PA	04/17/95	03/28/95	30,918	Ladies Sportswear.
Charland Sportswear, Charland Mfg (ILGWU).	Charleroi, PA	04/17/95	03/28/95	30,919	Ladies Sportswear.
Weatherford U.S. Inc. (Wkrs)	Williston, ND	04/17/95	03/23/95	30,920	Oilfield Rental Equipment.
Forbo Industries, Inc. (Wkrs)	Hazleton, PA	04/17/95	03/31/95	30,921	Wallcoverings.
Boskovich Farms Inc. (Wkrs)	Oxnard CA	04/17/95	04/07/95	30,922	Green Onions.
Angel Knitwear, Inc. (ILGWU)	So. Hackensack, NJ	04/17/95	04/06/95	30,923	Ladies' Knitwear.
Astronautics Corp of America (Wkrs)	Milwaukee, WI	04/17/95	03/21/95	30,924	Aircraft Instruments.
Collegeville Imagineering (Wkrs)	Zionsville, PA	04/17/95	04/03/95	30,925	Holloween Costumes.
Douglas Furniture (Co.)	Bedford Park, IL	04/17/95	04/06/95	30,926	Dinette Sets.
Midessa Drilling Co (Co)	Midland, TX	04/17/95	04/04/95	30,927	Oil and Gas Drilling.
Marty Sculpture, Inc. (Co)	Milton, VT	04/17/95	04/06/95	30,928	Figurenes.
National Micronetics, Inc. (Wkrs)	Kingston, NY	04/17/95	04/06/95	30,929	Magnetic Recording Heads for Disk Drive.
Sun Apparel, Inc. (Wkrs)	El Paso, TX	04/17/95	04/03/95	30,930	Men's and Womens' Jeans.
Waymart Knitting Co., Inc (Wkrs)	Waymart, PA	04/17/95	04/07/95	30,931	Children's Polo Shirts.
Thomas & Betts (Co)	Elizabeth, NJ	04/17/95	04/12/95	30,932	Electrical Conduit Fittings.

[FR Doc. 95–10360 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,792]

Pennzoil Products Company, Bradford, Pennsylvania; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–30,792 which was published in the **Federal Register** on March 17, 1995 (60 FR 14453) in FR Document 95–6659.

This revises the date received and the date of petition on the tenth line of the third and fourth columns in the appendix table on page 14453. The date received should read ''February 6, 1995'' and the date of petition should read ''February 2, 1995'' in the third and fourth columns on the tenth line of the appendix table.

Signed in Washington, D.C., this 18th day of April, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10364 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,709]

Contract Manufacturing Monroe, Louisiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 16, 1995, applicable to all workers of Contract Manufacturing and Monroe Manufacturing in Monroe, Louisiana. The Notice was published in the **Federal Register** on March 27, 1995 (60 FR 15791).

The Company requested that the Department review its certification for workers of the subject firm. New information from the company shows that only the workers at Contract Manufacturing producing baby bottles were adversely affected by imports. Workers at Monroe Manufacturing do not produce baby bottles. Accordingly, the Department is limiting its certification to only those workers at Contract Manufacturing in Monroe, Louisiana and revoking the certification for workers at Monroe Manufacturing in Monroe, Louisiana.

The intent of the Department's certification is to include only those workers of Contract Manufacturing who were affected by increased imports of baby bottles.

The amended notice applicable to TA–W–30,709 is hereby issued as follows:

''All workers of Contract Manufacturing, Monroe, Louisiana engaged in employment related to the production of baby bottles who became totally or partially separated from employment on or after January 23, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C., this 14th day of April 1995.

Dated: April 14, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10365 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,651]

Elbit Ft. Worth, Inc. (EFW, Inc.) Fort Worth, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administration reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Elbit Ft. Worth, Inc. (EFW, Inc.) Fort Worth, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,651; Elbit Ft. Worth, Inc. (EFW, Inc.)
Fort Worth, Texas (April 12, 1995)

Signed at Washington, D.C. this 19th day of April, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10363 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00260; 00260A]

IMC Magnetics Corp., Eastern Division, Hauppauge, NY and New England Alloys, Inc., Lawrence, MA; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 29, 1994, applicable to all workers of the Eastern Division of IMC Magnetics in Hauppauge, New York. The notice was published in the **Federal Register** on December 16, 1994 (59 FR 65078).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that New England Alloys, Inc., is a subsidiary of IMC Magnetics and has closed its operation on March 31, 1995 as a result of a reduced demand for its components by IMC Magnetics. Accordingly, the Department is amending the certification to include all workers of New England Alloys, Inc., in Lawrence, Massachusetts.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports of electrical motors.

The amended notice applicable to NAFTA—00260 is hereby issued as follows:

''All workers of the Eastern Division of IMC Magnetics Corporation in Hauppauge, New York and New England Alloys, Inc., in Lawrence, Massachusetts who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 14th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10355 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00307, 00307A]

H. Grabell & Sons, Inc., Paterson, NJ and Commerce, CA; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 29, 1994, applicable to all workers of the subject firm.

The Department, at the request of the company, reviewed the certification for workers of the subject firm. New findings show decreasing production of lamp shades and employment of H. Grabell & Sons, Inc., in Commerce, California in 1994. The findings show that the subject firm increased its reliance on imported lamp shades while discontinuing lamp shade production at Commerce, California.

Accordingly, the Department is amending the Paterson, New Jersey

certification to include workers at Commerce, California.

The amended notice applicable to NAFTA—00307 is hereby issued as follows:

''All workers and former workers of H. Grabell & Sons, Inc., Paterson, New Jersey and Commerce, California who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 10th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10357 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–37–M

Footwear Management Co.; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In the matter of: NAFTA–00252 Tony Lama Division, El Paso, Texas, a/k/a Justin Management Company, El Paso, Texas, NAFTA–00252A Justin Boot Company, Fort Worth, Texas, NAFTA–00252B Justin Boot Company, Cassville, Missouri, NAFTA–00252C Nocona Boot Company, Nocona, Texas, NAFTA–00252D Justin Boot Company, Sarcoxie, Missouri and NAFTA–00252E Justin Boot Company, Carthage, Missouri.

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued an Amended Certification for NAFTA Transitional Adjustment Assistance on February 6, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on February 17, 1995 (60 FR 9409).

The certification was subsequently amended April 6, 1995. The notice will soon be published in the **Federal Register**. The NAFTA reference numbers in the amendment were incorrect.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA—00252 is hereby issued as follows:

''All workers of Footwear Management Company in the following divisions: Tony Lama Division, El Paso, Texas, a/k/a Justin Management Company, El Paso, Texas; Justin Boot Company, Fort Worth, Texas; Cassville, Missouri; Sarcoxie, Missouri; and Carthage, Missouri and the Nocona Boot Company in Nocona, Texas who became totally or partially separated from employment on or after November 29, 1993 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.''

Signed at Washington, DC this 18th day of April 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations to the firm.

TA–W–30,690; Pennzoil Products Co., Roosevelt Utah Refinery, Roosevelt, UT

TA–W–30,688; Union Camp Corp., Retail Packaging of the Flexible Packaging Div., Savannah, GA

TA–W–30,703; Dauman Display, Inc., New York, NY

TA–W–30,813; Unisys, Government Systems Group, Great Neck, NY

TA–W–30,756; CMS Gilbreth Packing Systems, Kingston, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,833; Simon Petroleum Technology Corp., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,801; Gregory Rig Sales & Service, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,893; General Motors Corp., Service Parts Operations, Reno Parts Distribution Center, Sparks, NV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,739; Control Power, Inc., Ardmore, OK

A company decision to close the Ardmore plant and transfer production to another domestic plant in Midland, TX. Sales had been increasing prior to this transfer of production.

TA–W–30,843; Print and Peel, Paterson, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,840; General Mills, Inc., South Chicago, IL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–30,835; United Defense, L.P. (FMC/BMY), Aberdeen, SD

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,714; Endicott Forgings & Manufacturing Co., Inc., Endicott, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,828; Greenville Industries, Inc., Greenville, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,887; Texaco Refining & Marketing, Inc., Bellaire, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,780; Rhone Paulenc Silicones VSI, Troy, NY

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,751; Fashion Button, New York, NY

A certification was issued covering all workers separated on or after February 10, 1994.

TA–W–30,743, TA–W–30,761; Transport Manufacturing Corp., Rosell, NM, Motor Coach Industries, Int'l, Rosewell, NM

A certification was issued covering all workers separated on or after February 3, 1994.

TA–W–30,930; Sun Apparel Inc., Concepcion Plant, El Paso, TX

A certification was issued covering all workers separated on or after April 3, 1994.

TA–W–30,871; Exxon Production Research Co., Houston, TX

A certification was issued covering all workers separated on or after March 20, 1994.

TA–W–30,825, A & B; Red Eagle Resource Corp., Oklahoma City, OK, Cimarron Operating Co., Fairview, OK, Talon Trucking Co., Fairview, OK

A certification was issued covering all workers separated on or after June 12, 1994.

TA–W–30,790; C.H. Todd, Inc., Wichita, KS

A certification was issued covering all workers separated on or after February 6, 1994.

TA–W–30,818; Philips Technology—Airpax, Inc., Cambridge, MD

A certification was issued covering all workers separated on or after February 18, 1995.

TA–W–30,841; Highland Yarn Mills, Inc., High Point, NC

A certification was issued covering all workers separated on or after February 21, 1994.

TA–W–30,711; Avenue West Sportsear, Hammonton, NJ

A certification was issued covering all workers separated on or after January 9, 1994.

TA–W–30,750; Berkeley Belt, Inc., New York, NY

A certification was issued covering all workers separated on or after February 10, 1994.

TA–W–30,855; Brown Shoe Co., Fredericktown, MO

A certification was issued covering all workers separated on or after March 13, 1994.

TA–W–30,768; Kelley Oil Corp., Houston, TX & Operating at Various Locations in the Following States: A; NY, B; LA

A certification was issued covering all workers separated on or after February 7, 1994.

TA–W–30,888; Rogge Affiliates, Inc., Bandon, OR

TA–W–30,888A; Douglas Pacific Veneer, Inc., Bandon, OR

TA–W–30,888B; Rogge Forest Products, Inc., Bandon, OR

TA–W–30, 888C; Rogge Wood Products, Inc., Wallowa, OR

A certification was issued covering all workers separated on or after March 16, 1994.

TA–W–30,895; Lar Sportswear Co., Palmerton, PA

A certification was issued covering all workers separated on or after March 25, 1994.

TA–W–30,741; Boeing of Portland, Portland, OR

A certification was issued covering all workers separated on or after February 2, 1994.

TA–W–30,718; ''Q–T'' Foundations Co., Inc., Bergenfield, NJ

A certification was issued covering all workers separated on or after February 16, 1995.

TA–W–30,752; Visador Co., Tacoma, WA

A certification was issued covering all workers separated on or after February 7, 1994.

TA–W–30,706; Xerox Corp., Document Production Systems Div., Rochester, NY

A certification was issued covering all workers separated on or after January 18, 1994.

TA–W–30,765 & TA–W–30,766; Dexter Shoe Co., Dexter, ME and Newport, ME

A certification was issued covering all workers separated on or after February 10, 1994.

TA–W–30,726; Goldex, Inc., Goldsboro, NC

A certification was issued covering all workers separated on or after January 30, 1994.

TA–W–30,773; Blanche, Inc., dba GBS Corp., Blue Ball, PA

A certification was issued covering all workers separated on or after February 14, 1994.

TA–W–30,849; Voyager Emblems, Inc., Sanforn, NY

A certification was issued covering all workers separated on or after March 6, 1994.

TA–W–30,782; Perry Manufacturing Co., Elk Creek, VA

A certification was issued covering all workers separated on or after February 27, 1994.

TA–W–30,728 & A; Waco Oil and Gas Co., Glenville, WV & Operating at Various Locations in the State of West Virginia

A certification was issued covering all workers separated on or after February 3, 1994.

TA–W–30,796; TTC, Inc., Kankakee, IL

A certification was issued covering all workers separated on or after February 8, 1994.

TA–W–30,875; Val Mode Lingerie, Inc., Bridgeton, NJ

A certification was issued covering all workers separated on or after March 17, 1994.

TA–W–30,789; Schweiger Industries, Inc., Jefferson, WI

A certification was issued covering all workers separated on or after February 17, 1994.

TA–W–30,800; Penn-Union Corp (Formerly Teledyne Penn-Union), Edinboro, NJ

A certification was issued covering all workers separated on or after February 22, 1994.

TA–W–30,792; Pennzoil Products Co (Oil and Gas Segment) Bradford District, Bradford, PA

A certification was issued covering all workers separated on or after February 2, 1994.

TA–W–30,781; Names, Inc., Allentown, PA

A certification was issued covering all workers of Names, Inc., Allentown, PA separated on or after January 16, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of April, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00374; Boeing of Portland, Portland, OR

The investigation revealed that criteria (3) and (4) were not met. There was no shift of production from Boeing of Portland to Mexico or Canada during the period under investigation, neither did Boeing of Portland import from Mexico or Canada any articles like or directly competitive with aircraft parts manufactured at the Portland facility.

NAFTA–TAA–00375; Schweiger Industries, Inc., Jefferson Furniture Manufacturing Facility, Jefferson, WI

The investigation revealed that criteria (3) and (4) were not met. Surveys conducted with customers revealed an increase in purchases from domestic firms and that they do not import a significant proportion of upholstered furniture from Canada or Mexico.

NAFTA–TAA–00377; DLCI USA, Van Buren, ME

The investigation revealed that criteria (3) and (4) were not met. The investigation findings revealed that DLCI USA has not shifted production of bicycle frames and parts from the Van Buren, ME facility to Canada or Mexico. Also disclosed was that all the plant's production was shipped to the parent company located in France. Lost export sales cannot be used as the basis for certification under the Trade Act of 1974.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00397; Plastmo, Inc., Creswell, OR

A certification was issued covering all workers at Plastmo, Inc., Creswell, OR separated on or after March 2, 1994.

NAFTA–TAA–00378; AMSCO International, Inc., Wilson, NY

A certification was issued covering all workers at AMSCO International, Inc., Wilson, NY separated on or after February 24, 1994.

NAFTA–TAA–00395; Paul-son Gaming Supplies, Inc., Las Vegas, NV

A certification was issued covering all workers at Paul-son Gaming Supplies, Inc., Las Vegas, NV separated on or after March 13, 1994.

NAFTA–TAA–00394; Modoc Lumber Co., Klamath Falls, OR

A certification was issued covering all workers of Modoc Lumber Co., Klamath Falls, OR separated on or after March 6, 1994.

NAFTA–TAA–00379 & A; I. Appel Corp, Forfit Rogers, McMinnville, TN and Lafayette, TN

A certification was issued covering all workers of I. Appel Corp., Formit Rogers facilities in McMinnville and Lafayette, TN separated on or after February 27, 1994.

I hereby certify that the aforementioned determinations were issued during the months of April, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 19, 1995.

Victor J. Trunzo

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–10361 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–30–M

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on May 16, 17 and 18. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, N.E., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, May 16, 1995

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 2

1. Status reports
   a. BLS Budget
   b. Contingent Worker Survey
   c. Revision of the Standard Industrial Classification
   d. Revision of the Standard Occupational Classification
2. Discussion:
   a. Development of a National Wage Record Database
   b. Restart of the Mass Layoff Statistics Program
   c. American Statistical Association recommendations for improvement of the CES and 202 programs
   d. Labor Market Information report
   e. Current Population Survey—lessons learned
3. Presentation: understanding recent trends in labor force participation

1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 2

1. Current Consumer Price Index (CPI) issues and plans
2. Other business

Wednesday, May 17, 1995

9:30–3:00 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 2

1. 1992 and 1993 Bulletins for the Survey of Occupational Injuries and Illnesses
2. User access to data from the Survey of Occupational Injuries and Illnesses
3. The demographics of injured/ill workers and the circumstances of their injuries and illnesses as reported in the 1993 Survey
4. Survey of Employer-Provided Training
5. Occupational Safety and Health Administration (OSHA) recordkeeping plans
6. Budget/Appropriations

1:30 p.m.—Committee on Wages and Industrial Relations—Meeting Rooms 9 and 10

1. An initiative to redesign compensation statistics
2. Current and future changes to the Occupational Compensation Survey Program (OCSP) job list
3. The recent Employee Benefits Survey bulletin: a general overview
4. Surveys of Employer-Provided Training: An update
5. Other business

Thursday, May 18, 1995

1:00 p.m.—Committee on Foreign Labor Statistics—Meeting Room 2

1. Review of recent development in the Office of Productivity and Technology
2. Chartbook on international labor statistics comparisons

Committee on Productivity, Technology and Growth—Meeting Room 2

1. New index number method for industry labor productivity data
2. New index number method for major sector labor productivity data
3. Other business

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Signed at Washington, D.C. this 21st day of April 1995.

Katharine G. Abraham,

Commissioner.

[FR Doc. 95–10366 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–24–M

Pension and Welfare Benefits Administration

[Application No. D–09875, et al.]

Proposed Exemptions; Toyota Motor Sales, U.S.A., Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Toyota Motor Sales, U.S.A., Inc. Money Purchase Pension Plan for Bargaining Unit Employees (the Plan), located in Torrance, CA

[Application No. D–09875]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan (the Sale), of group annuity contract No. GA–4564 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit), located in Newark, New Jersey, to Toyota Motor Sales, U.S.A., Inc., a California corporation, (the Employer), a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GAC as determined by the trustee of the Plan on the date of the Sale, or an amount that is equal to the total funds expended by the Plan in acquiring and holding the GAC, plus the amount of interest earned and accrued by the Plan on the GAC to the date of the Sale,[1] less all withdrawals from the Plan to the date of the Sale, and less all advances made to the Plan by the Employer to the date of the Sale.

Summary of Facts and Representations

1. The Employer is a California corporation with its corporate headquarters in Torrance, California and other facilities located throughout the United States, including port facilities, regional sales offices, and parts distribution centers. The Employer is primarily engaged in the wholesale distribution of automobiles, light trucks, industrial equipment and accessories throughout the United States (excluding Hawaii). In addition, the Employer exports automobiles and related replacement parts and accessories to Europe, Asia, and the U.S. Territories. Also the Employer manufactures certain automobiles and trucks though its subsidiaries in the United States.

2. The Plan is a defined contribution plan that is intended to qualify under the provisions of section 401(a) of the Code as a money purchase pension plan with individual accounts for its participants. The sponsor of the Plan and its principal funding source is the Employer; however, eligible employees who are participants of the plan may elect to make additional, voluntary funding contributions. The Plan is maintained pursuant to various collective bargaining agreements between the Employer and the unions representing the employees. As of September 30, 1994, the Plan had 548 active participants and total assets of $4,468,556.

From April 4, 1986, to October 1, 1987, the named fiduciary of the Plan was Toyota Body, Inc., and from October 1, 1987, to August 19, 1994, the named fiduciary was the Employer. Since August 19, 1994, the named fiduciary for the Plan is the Toyota Employee Benefit Committee (the Benefit Committee), which consists of 4 or more individuals who are appointed

[1] This takes into account the rate of interest guaranteed after December 31, 1991, to the Plan by the Employer.

by the president of the Employer. The Benefit Committee has full authority to control and manage the assets and administration of the Plan. The powers of the Benefit Committee includes, among other things, the authority to appoint legal counsel and other agents for the Plan.

On September 15, 1994, the Eagle Trust Company (the Trustee), a trust company incorporated under the Pennsylvania Bankruptcy Code, was selected by the Benefit Committee to serve as the trustee of the assets of the Plan. The applicant represents the Trustee to be independent and not affiliated with the Employer in any other capacity.

From July 16, 1984, when the Plan acquired the GAC from Mutual Benefit until July 16, 1991, the GAC served as the exclusive investment vehicle for the Plan.[2] Until July 16, 1991, Mutual Benefit would periodically make a determination of the interest rate used to compute the earnings paid to the Plan by the GAC. This involved the establishment of a separate subfund by Mutual Benefit for each annual deposit period of contributions during the life of the GAC, and the applicable interest rate for such subfund thereafter was reset on an annual basis. From the issuance of the GAC through December 31, 1991, the GAC was earning various interest rates, ranging from 8.35 percent to 14.05 percent. The applicant represents that the GAC had no stated maturity date. The GAC can be discontinued unilaterally by either the Employer or Mutual Benefit, or if certain stipulated conditions arise.

3. On July 16, 1991, Mutual Benefit was placed into rehabilitation proceedings by the New Jersey Commissioner of Insurance.[3] As a result of these proceedings the assets of the Plan invested in the GAC were frozen. Following cessation of payments by Mutual Benefit with respect to the GAC, the Employer decided to make periodic advances of funds (the Advances) to the Plan to enable the payment of distributions to terminating and retiring participants and the payment of certain in-service withdrawals to current participants.[4] The applicant represents that at the same time the Advances commenced, the Employer committed itself to enhance the rate of return the individual accounts of the participants would earn and accrue after December 31, 1991, by guaranteeing a 6 percent per annum return for the calendar year 1992 and a 5 percent per annum return for the subsequent calendar years. The applicant further represents that the periodic Advances made by the Employer to the Plan, as of September 30, 1994, totaled $460,668.

The applicant represents that it desires to enter into the proposed transaction in order to protect the participants of the Plan from the risks of investment loss associated with the GAC. Further, the applicant represents that the Plan needs to sell its interest in the GAC in order to give the participants of the Plan more investment flexibility to direct the investments of their respective account balances to other investments. The applicant also represents that the Plan will not incur any expense with respect to the proposed transaction.

4. In order to protect the interests of the participants and beneficiaries of the Plan, the Employer proposes to purchase the GAC from the Plan for cash. The proposed purchase price for the GAC is to be the greater of the fair market value of the GAC as determined by the Trustee on the date of the Sale or an amount that is equal to the total funds expended by the Plan in acquiring and holding the GAC, plus the amount of interest earned and accrued by the Plan on the GAC to the date of the Sale,[5] less all withdrawals from the Plan to the date of the Sale, and less all advances to the Plan made by the Employer to the date of the Sale. As of September 30, 1994, the GAC had a fair market value of $2,349,840.

The Trustee has reviewed the proposed transaction as an independent fiduciary on behalf of the Plan and its participants and beneficiaries. The Trustee represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive, from the Employer in a one-time transaction, cash in an amount that is the greater of either (1) the fair market value of the GAC; or (2) the total funds expended by the Plan in acquiring and holding the GAC plus the amount of interest earned or accrued by the Plan to the date of the Sale, less withdrawals and less prior advances of funds to the Plan made by the Employer; (b) the proposed transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with continued holding of the GAC; (c) the Plan will not incur any loss or expense from the proposed transaction; and (d) the Trustee of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries, and that the proposed price for the GAC is not less than its fair market value.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Masik Tool and Die Corporation Profit Sharing Plan (the Plan), located in Cudahy, WI

[Exemption Application No. D–09899]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The past leasing (the Lease) of a lathe (the Lathe) owned by the Plan and certain individually-directed accounts in the Plan (the Accounts) to Masik Tool and Die Corporation (Masik), a party in interest with respect to the Plan; and (2) the proposed cash sale (the Sale) of the Lathe by the Accounts to Masik.

This proposed exemption is conditioned on the following requirements:

(1) With respect to the past Lease—

(a) the terms and conditions of the Lease have been at least as favorable to the Plan and the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the value of the Lathe did not exceed

[2] The Department notes that the investment in the GAC is governed by the provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not proposing herein relief for any violations of Part 4 which may have arisen as a result of not diversifying the investments of the Plan.

[3] The Department notes that the decision to acquire and hold the GAC are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of the Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC by the Plan.

[4] The applicant represents that the terms of the periodic advances to the Plan satisfied the conditions of the class exemption PTE 80–26 (45 FR 28545, April 29, 1980). The Department express no opinion herein as to whether the periodic advances to the plan satisfied the terms and conditions of PTE 80–26.

[5] This takes into account the rate of interest guaranteed after December 31, 1991, to the Plan by the Employer.

twenty-five percent of the assets of the Plan or of any of the Accounts at any time during the duration of the Lease; (c) an independent, qualified fiduciary approved of the Lease on behalf of the Plan and the Accounts and has monitored the Lease throughout its entirety; (d) the rental amount received by the Plan and the Accounts was based upon the fair market rental value of the Lathe; and (e) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

(2) With respect to the prospective Sale—

(a) the terms and conditions of the Sale are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale is a one-time cash transaction; (c) the Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (d) the Sale price for the Lathe is based upon its fair market value on the date of the Sale as determined by an independent, qualified appraiser; and (e) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

EFFECTIVE DATE: This exemption, if granted, will be effective as of June 1, 1988 with respect to the Lease. The proposed exemption will be effective as of the date of the grant of the exemption with respect to the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Masik, a closely-held Wisconsin corporation engaged in the business of manufacturing, rebuilding, and repairing tools and dies for industrial manufacturers in Southeastern Wisconsin. Joseph Masik, Jr. and his wife, Patricia Masik, hold 100 percent of Masik's stock and are its only directors. Mr. Masik, Mrs. Masik and David Zirkelbach serve, respectively, as President, Secretary/Treasurer and Vice President of Masik. In addition to being officers of Masik, Mr. Masik, Mrs. Masik and Mr. Zirkelbach have been the trustees for the Plan (the Trustees) from the inception of the Lease until the present time.

On May 31, 1990, the Trustees amended the Plan to provide for participant directed investment. As of May 30, 1992, the Plan had twenty-one participants and $322,693 in assets. Such assets are primarily invested in life insurance annuity contracts and certificates of deposit.

2. Among the assets of the Plan is the Lathe, which is a seventy-six inch, used Bullard-Dynatrol Vertical Turret Lathe, serial number 31820. The Lathe weighs 130,000 pounds and measures twenty feet in height. Within six months of the Plan's purchase of the Lathe, Masik mounted the Lathe in the concrete floor of Masik's plant and attached a $20,000 ''tracer unit'' to the Lathe at no cost to the Plan. As of August 15, 1994, the Lathe remained mounted in the concrete floor.

3. The Trustees acquired the Lathe, on behalf of the Plan, in January of 1987 from the George Meyer Manufacturing Company, an unrelated party, for a purchase price of $33,250.[6] The Trustees represent that they purchased the Lathe because, based upon their experience in the industry, they believed that the purchase price of the Lathe was less than one-half of its fair market value.[7]

4. The Trustees represent that the exact date that the Lathe was first placed into the service of Masik is unknown. However upon a review of the Plan's records, partial installation of the Lathe occurred sometime prior to February 4, 1987. Masik formally commenced leasing the Lathe from the Plan under a written lease (the Lease) executed June 2, 1988 with an initial five-year term expiring May 31, 1993. Masik represents that it compensated the Plan for its use of the Lathe which occurred prior to June 2, 1988. As of June 1, 1987, the Plan had in excess of $200,000 in assets thereby involving sixteen percent of the Plan's assets in the Lathe. Masik represents that from June 2, 1988 until the termination of the Lease on May 31, 1993, the Plan and the Accounts received $105,540, which represents an annualized rate of return of sixty-three percent.

5. In March of 1989, Masik applied to the Department for exemptive relief with respect to the Lease but withdrew that application in June of 1989. The Trustees represent that the reason for the withdrawal was the mistaken belief that amending the Plan to allow for participant directed investments (see Representation #1) would result in correction of the past prohibited transaction and would ensure that no future prohibited transactions would occur. Masik represents that in response to this Plan amendment, all of the eligible participants chose to direct their account balances (the Accounts) on September 20, 1990 towards the purchase of the Lathe and the leasing arrangements. Masik and the Trustees amended the Lease to reflect these participant investment elections. The Trustees represent that no participant directed more than twenty-five percent of his or her account balance to the Lease.

6. Roger McManus represents that he served as an independent, qualified fiduciary on behalf of the Plan and the Accounts with respect to the Lease beginning in June of 1988. Mr. McManus' qualifications include twenty-five years of experience practicing law, primarily in the area of small business. Mr. McManus represents that he was unrelated to, and independent of, Masik. Mr. McManus states that he understood and acknowledged his duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan based upon his familiarity with the fiduciary responsibility provisions of the Act.

Mr. McManus states that, in 1988, he reviewed the investment portfolio of the Plan and considered the diversification of the Plan's assets as well as its liquidity needs. Mr. McManus represents that the Lease did not represent more than twenty-five percent of the assets of any of the Accounts. Mr. McManus believed that the Lease would be in the best interests of the Plan and its participants and beneficiaries as an investment for the Plan's portfolio based on the Lease's rate of return, the stability of the lessee, the character and diversification of the Plan's other assets, and the projected liquidity needs of the Plan.

Mr. McManus states that, based upon his previous representation of other businesses and involvement in numerous leasing transactions, he believed that the Lease provisions were quite favorable to the Plan participants and were at least comparable to an arm's length transaction. In addition, Mr. McManus represents that he evaluated the term of the Lease to assure that the Lease satisfied the established standards for commercial reasonableness. Mr. McManus represents that the monthly

[6] The Department is expressing no opinion in this proposed exemption on whether the acquisition and holding of the Lathe by the Plan violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

[7] Subsequently, Russ Bottoni (Mr. Bottoni), the owner of Russco Sales, Inc., a company specializing in used equipment, appraised the Lathe. Based upon comparable sales, Mr. Bottoni placed the fair market value of the Lathe as of February 22, 1989 at $79,500.

Lease payments were established at $1,759 based upon calculations which utilized mortgage-type amortization schedules and the fair market and salvage values of the Lathe, which were determined by the Plan's accountant, Tom Harmann.

Mr. McManus represents that he monitored the Lease from its inception through April 10, 1992. Mr. McManus further represents that from the inception of the Lease in 1988 until April 10, 1992, Masik has abided by all of the terms of the Lease, the Lathe has been kept in good working order and all rental due the Plan has been timely paid.

Jeffrey R. Brodek represents that, as of April 10, 1992, he assumed Mr. McManus' role as the independent, qualified fiduciary on behalf of the Plan and the Accounts with respect to the Lease. Mr. Brodek's qualifications include ten years of experience practicing employee benefits law. Mr. Brodek represents that he is unrelated to, and independent of, Masik. Mr. Brodek states that he understood and acknowledged his duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan based upon his familiarity with the fiduciary responsibility provisions of the Act.

Mr. Brodek represents he assumed the same duties that Mr. McManus had previously undertaken which included enforcing the terms of the Lease, making sure that the Lathe was kept in good working order and making sure that payments due under the Lease were timely paid to the Plan. Mr. Brodek represents Masik has abided by all of the terms of the Lease, the Lathe has been kept in good working order and all rentals due the Plan were timely paid through May 31, 1993, the expiration of the original five-year term of the Lease. At this time, the Trustees suspended any future Lease payments pending resolution of the prohibited transaction issues. However, Masik represents that it utilized the Lathe in the course of its operations after the cessation of the Lease payments. Masik represents that it will make payments pursuant to the rental rate specified by the Lease to the Plan for every month between June of 1993 through the present time, plus a reasonable rate of interest.

7. Because of the party in interest relationship and the past leasing arrangement between the Plan and Masik, the Trustees along with Masik (the Applicants) are aware of the fact that prohibited transactions have occurred in violation of the Act as of the date of Masik's first use of the Lathe. The Applicants have requested retroactive exemptive relief with respect to the Lease as well as prospective exemptive relief for the Sale. In this regard, the Department is not proposing exemptive relief for the prohibited transactions described in this proposed exemption for the periods: (1) Prior to June 1, 1988, the date that Masik began leasing the Lathe from the Plan pursuant to a written lease; and (2) after May 31, 1993, the cessation of the Lease payments. Accordingly, Masik represents that within ninety days of the publication in the **Federal Register** of the grant of this exemption, it will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

8. Masik represents that the participants whose accounts are invested in the Lathe desire to sell the Lathe so that an alternative investment can be made by the Accounts. The Trustees represent that because the Lathe is presently mounted in the concrete floor of Masik's plant, sale to an unrelated party at fair market value is unlikely due to the cost of removing the Lathe. Therefore, Masik proposes to purchase the Lathe for its fair market value on the date of the Sale. The Plan will not be required to pay any commissions, costs or other expenses in connection with these transactions.

9. The Trustees retained Richard Levo, a sales engineer for L.L. Richards Machinery Co, Inc. to appraise the Lathe. Mr. Levo has dealt in new and used chipmaking and fabricating machine tools for forty-three years. His appraisal, dated June 6, 1994, places the fair market value of the Lathe at $29,500 based on its age, condition and location. Mr. Levo states that the Lathe has declined in value since its acquisition in 1987 due to recent innovations in technology which have left the Lathe obsolete. The appraisal for the Lathe will be reviewed and updated prior to the Sale pursuant to this exemption. Mr. Levo represents that both he and L.L. Richards Machinery Co, Inc. are independent of and unrelated to Masik.

10. In summary, the Applicants represent that the Lease and the Sale will satisfy the statutory criteria for an exemption under 408(a) of the Act because:

(a) With respect to the past Lease—

(1) the terms and conditions of the Lease have been at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (2) the Lathe did not exceed twenty-five percent of the assets of the Plan or of any individually-directed accounts within the Plan at any time during the duration of the leasing arrangements; (3) Roger McManus, acting as the Plan's independent, qualified fiduciary, approved of the Lease; (4) Mr. McManus and subsequently, Jeffrey Brodek, acting as the Plan's independent, qualified fiduciary during different periods, monitored the Lease; (5) the rental charged by the Plan was based upon the fair market rental value of the Lathe; and (6) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

(b) With respect to the prospective Sale—

(1) the Sale will be a one-time cash transaction; (2) the Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Lathe will be appraised by Richard Levo, an independent, qualified appraiser; (4) the sales price for the Lathe will reflect its fair market value on the date of the Sale; and (5) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Simplex Time Recorder Co., Employee Savings Plan (the Plan), located in Gardner, Massachusetts

[Application No. D–09935]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the proposed extension of credit (the Loan) to the Plan by Simplex Time Recorder Co. (the Employer), a party in interest with respect to the Plan, with regard to a

group annuity contract (the GAC) issued by Executive Life Insurance Company of California (ELIC), and (2) the Plan's potential repayment of the Loan (the Repayment); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(B) The Loan will be repaid only out of amounts paid to the Plan by ELIC, its successors, or any other responsible third party making payment with respect to ELIC's obligations under the GAC (the GAC Proceeds); and

(C) Repayment of the Loan is waived with respect to the amount by which the Loan exceed GAC proceeds.

Summary of Facts and Representations

1. The Employer is a Massachusetts corporation with its principal place of business located in Gardner, Massachusetts. The Plan is a defined contribution plan with approximately 3,500 participants and total assets of approximately $82.3 million as of December 31, 1994. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts.

2. The terms of the Plan provide that its participants may invest the Accounts among any of several investment funds (the Funds) managed by the Plan's trustee, State Street Bank and Trust Company (the Trustee), including a fixed income fund (the F.I. Fund). The F.I. Fund invests in part in insurance company group annuity contracts under which the issuer guarantees repayment of principal and payment of interest at a fixed annual rate through the date of maturity specified in the contract. Among the contracts held by the Plan in the F.I. Fund is the GAC, identified as follows: Contract number CG0124803A, issued to the Trustee on January 13, 1988 for an initial principal deposit of $678,987.69, with a principal deposit limit of $4,440,000. The GAC provides for compound annual interest at the rate of 10 percent (the Contract Rate), and its terms enable withdrawals to fund distributions, participant loans, in-service withdrawals, and participant-directed transfers of Account balances from the F.I. Fund to the other Funds (the Withdrawal Events). The GAC features a maturity date of June 30, 1993, at which time the Plan was due a payment (the Maturity Payment) in the amount of the total principal deposits during the term of the GAC plus interest thereon at the Contract Rate through maturity less previous withdrawals.

3. On April 11, 1991, ELIC was placed into conservatorship (the Conservatorship) by the Insurance Commissioner of the State of California. The Employer represents that ELIC ceased to honor requests for withdrawals from the GAC upon commencement of the Conservatorship. The effect of the Conservatorship has been to freeze all assets invested in the GAC. This freeze has prevented the Plan from making withdrawals from the GAC to fund Withdrawal Events with respect to Accounts invested in the GAC.[8]

In response to the Conservatorship, the Employer and the Trustee provided for the GAC to be segregated from the other assets in the F.I. Fund and placed in a special fund (the Segregated Fund) on April 30, 1991, in order to confine the risks associated with the GAC to those Accounts which were invested in the F.I. Fund as of the commencement of the Conservatorship. Each Account with an interest in the F.I. Fund as of the date of the Conservatorship obtained a pro-rata interest in the Segregated Fund, from which withdrawals are prohibited for all purposes. As of April 30, 1991, the accumulated book value of the GAC was $4,173,231, representing total principal deposits plus interest at the Contract Rate less previous withdrawals. This value constituted approximately 10 percent of the assets in the F.I. Fund and approximately 7.6 percent of the Plan's total assets. Upon the maturity of the GAC on June 30, 1993, the Maturity Payment then due was not made. Approximately 2,100 Plan participants have portions of their Accounts invested in the Segregated Fund.

4. A rehabilitation plan for ELIC (the Rehab Plan) was approved in late 1993, which offered to the Plan, as a holder of an ELIC GAC, two options: The Plan could ''opt in'' to the Rehab Plan by continuing to hold the GAC with modified terms, or the Plan could ''opt out'' by agreeing to a cancellation of the GAC in exchange for payments (Rehab Payments) over a period of approximately five years. In 1994, the Trustee made the opt-out election on behalf of the Plan. The Trustee represents that under the opt-out election, the exact amount of the Rehab Payments is not determinable. However, the Trustee and the Employer expect a total opt-out recovery of approximately $3.7 million in Rehab Payments with respect to the GAC. Approximately 65 percent of this total, i.e., $2.4 million, was received by the Plan shortly after the opt-out election was processed. An additional $485,000 was received by the Plan in March 1995. The Trustee and the Employer expect approximately $815,000 more in Rehab Payments over a remaining three-year period.

5. Shortly after the Conservatorship commenced, in order to provide some immediate relief to the Plan with respect to the funding of Withdrawal Events, the Employer structured a loan arrangement (the Initial Agreement) which was intended to utilize Prohibited Transaction Class Exemption 80–26 (PTCE 80–26, 45 FR 35040, May 23, 1980), relating to interest-free loans for, among other things, the funding of plan benefits. In accordance with the terms of the Initial Agreement, the Employer commenced the making of interest-free loans (the Initial Loans) to the Plan solely to fund the cash payment of benefits by the Plan to participants with Account balances in the Segregated Fund, in lieu of the amounts which otherwise would have been withdrawn from the GAC for such payments. The Employer represents that the Initial Loans are exempt from the prohibited transaction provisions of the Act because they satisfy the requirements of PTCE 80–26.[9] As of December 31, 1994, a total of $639,967 had been loaned to the Plan by the Employer pursuant to the Initial Agreement.

6. Although the Initial Agreement has enabled former employees to receive full distribution of their Account balances, including portions invested in the Segregated Fund, the Employer represents that the Initial Arrangement is not satisfactory with respect to the participants of the Plan who remain current employees of the Employer. Participants who are current employees remain unable to effect participant loans, in-service withdrawals and transfers with respect to Account balances in the Segregated Fund. Accordingly, the Employer seeks to provide the Plan with the ability to effect the full range of Withdrawal Events with respect to Accounts invested in the Segregated Fund, by lending the Plan an amount of cash equal to the remaining balance of the Segregated Fund. The Employer requests an exemption for such a loan (the Loan), as well as its potential repayment, under the terms and conditions described herein.

[8] The Department notes that the decisions to acquire and hold the GAC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC issued by Executive Life.

[9] The Department expresses no opinion as to whether the loans made pursuant to the Initial Agreement satisfy the requirements of PTCE 80–26, or whether such loans were exempt from the prohibitions of section 406 of the Act.

7. The terms of the Loan and its repayment (the Repayments) will be set forth in a written agreement between the Trustee and the Employer (the New Agreement). Under the New Agreement, the Employer proposes to make the Loan in the amount remaining in the Segregated Fund as of the date of the Loan. The amount remaining in the Segregated Fund as of the date of the Loan will represent the GAC's accumulated book value as of the date of the Conservatorship, i.e., $4,173,231, reduced by the sum of the total Rehab Payments and Initial Loans made as of the Loan date. Accordingly, the Employer estimates that the Loan will be in the amount of approximately $600,000. The Employer represents that after the exemption proposed herein is final, if granted, and the New Agreement has been approved by the Internal Revenue Service [10], the Employer will make the Loan to the Plan and will then exercise its powers under the Plan to close the Segregated Fund. Upon closing the Segregated Fund, all Accounts which remained invested in that Fund will be transferred back to the F.I. Fund, and the Employer will announce to Plan participants the availability of the Loan funds to effect all Withdrawal Events with respect to amounts previously frozen in the Segregated Fund. The Employer and the Trustee represent that the Plan's participants will benefit from the proposed Loan because it will ensure that the participants receive 100% of the Conservatorship-date value of their Accounts invested in the GAC and such amounts will be available as soon as approval is received from the Internal Revenue Service and the Department.[11]

8. The New Agreement provides for repayment of the Loan (the Repayment), but no interest will be paid on the principal amount of the Loan. Under the New Agreement, Repayment is limited to amounts, if any, paid to the Plan by or on behalf of ELIC, or its successor, or any other responsible third parties making payment with respect to ELIC's obligations under the GAC (the GAC Proceeds). No other assets of the Plan will be available for repayment of the Loan. If the GAC Proceeds are not sufficient to fully repay the Loan, the New Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives GAC proceeds in excess of the total amount of the Loan, such additional amounts will be retained by the Trust and allocated among the accounts of the Plans' participants.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The transaction will restore the Plan's ability to fund Withdrawal Events with respect to Accounts invested in the GAC; (2) The Plan will not incur any expenses or pay any interest with respect to the transaction; (3) Repayment of the Loan will be made only from GAC Proceeds paid to the Plan; (4) If the GAC Proceeds are not sufficient to fully repay the Loan, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount; and (5) Repayment of the Loan will be waived with respect to the amount by which the Loan exceeds the GAC Proceeds.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Thrift Plan of Columbia Gas System (the Plan), Located in Wilmington, DE

[Application No. D–09959]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the proposed loan of funds (the Loan) to the Plan by The Columbia Gas System, Inc. (the Employer), the sponsor of the Plan, and its wholly-owned subsidiary, Columbia Gas Transmission Corporation (the Subsidiary), with respect to the Guaranteed Investment Contract No. 61969 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the potential repayment by the Plan of the Loan upon the receipt by the Plan of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or expenses are paid by the Plan in connection with the Loan; (b) all the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) the Loan will be no less than the accumulated book value of the GIC as of August 12, 1994; (d) the repayment of the Loan will not exceed the total amount of the Loan; (e) the repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation, or State Guaranty Funds, or other third-party sources; (f) the repayment of the Loan is waived to the extent the Loan exceeds the proceeds the Plan receives from the GIC; and (g) any proceeds or future interest credited under the GIC after August 12, 1994, in accordance with the Rehabilitation Plan by the State of Michigan, will be allocated and disbursed to the affected participants of the Plan.

Summary of Facts and Representations

1. The Employer is a Delaware corporation with its principal offices located in Wilmington, Delaware. It is a public utility holding company with 15 subsidiaries primarily engaged in the distribution, transmission, and production of natural gas in the Midwest, Southeast, and Mid-Atlantic sections of the country and with production facilities in Texas and West Virginia.

The Employer is also a publicly held corporation with its securities traded on the New York Stock Exchange. For the fiscal year ending September 30, 1994, it had revenues of approximately $3.1 billion.

The Employer and all its subsidiaries are participating employers in the Plan.

2. The Plan is a defined contribution plan with an employer-matching funding feature. There are provisions in the Plan for individual accounts and participant-directed investments of assets. The Plan has been qualified pursuant to the requirements of sections 401(a) and 401(k) of the Code. There are approximately 9,200 participants in the Plan and $341.9 million in total assets, as of December 31, 1994.

On October 1, 1989, Bankers Trust Company of New York, New York became trustee of all of the assets of the Plan. On October 17, 1991, the Fidelity Bank, N.A., located in Philadelphia, Pennsylvania became trustee of Plan assets that are invested in common stock issued by the Employer and held in the Columbia Gas System Stock Fund (the Stock Fund) of the Plan. As of December 31, 1994, the Stock Fund had an aggregate fair market value of $155.4 million and represented approximately

[10] Internal Revenue Procedure 92–16 provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employee-sponsor and the trust of a qualified defined contribution plan.

[11] The Department notes that the exemption, if granted, will not affect the rights of any participant or beneficiary with respect to any civil action against Plan fiduciaries for breaches of section 404 of ERISA in connection with any aspect of the GAC transactions.

45.5 percent of the total assets of the Plan.

On April 1, 1992, the Fidelity Management Trust Company, a Massachusetts trust company, located in Boston, Massachusetts (the Trustee) became trustee of all the other assets in the Plan and Bankers Trust Company ceased to be a trustee of any Plan assets.

3. The Board of Directors of the Employer establishes the general investment policy for the Plan and has sole authority to appoint and remove any Trustee and any member of the Thrift Plan Committee (the Committee).

The Committee is the named fiduciary of the Plan and consists of officers and directors of the Employer and its subsidiaries. The duties of the Committee include, *inter alia*, the selection of the various investment options offered to the participants by the Plan; and the appointment and removal of investment managers, agents, assistants, legal counsel, and clericals. The Committee also has the duty to interpret the terms and conditions provided in the Plan and to adopt rules and restrictions to implement and administer the Plan and its general investment policy.

The Trustee is the custodian of the assets of the Plan and is responsible for the establishment and maintenance of the investment and disbursement accounts of the Plan. In addition, the Trustee invests Plan assets as directed by the participants into 14 various investment options offered by the Plan. These investment options include 13 diversified mutual funds offered by the Trustee. Initially, all the matching contributions to the Plan by the Employer are invested in the Stock Fund for the respective participants until the participants attain the age of 55 years; and then, the participants may direct the matching contributions by the Employer into any of the 14 investment options offered by the Plan.

4. The Plan acquired the GIC on January 2, 1990, for the consideration of $6,500,000. The GIC provides for annual guaranteed interest payments of 8.8 percent with a maturity date of January 1, 1995. Since the GIC was acquired by the Plan, there have been withdrawals totalling $2,272,377, which represents annual interest payments received through January 2, 1994. Interest payments are due January 2 each year. All interest payments through January 2, 1994 have been made. As of August 11, 1994, the GIC had a balance of $6,838,983.56, including $338,983.56 in accrued interest.

When the Plan requested payment of the value of the GIC on its maturity date, Confederation was unable to grant the request because, on August 12, 1994, the Ingham County Circuit Court in Lansing, Michigan had placed Confederation in Conservatorship and Rehabilitation, causing Confederation to suspend payments on all of its contracts including the GIC.[12] At this time, August 12, 1994, a segregated subaccount (the Segregated Account) was established within the Money Market/Investment Contract Fund (MMIC) offered by the Trustee to hold the assets of the Plan represented by the GIC. The Segregated Account represents approximately 17 percent of the funds in the MMIC.

The applicant represents that the Segregated Account, which holds the GIC that is subject to suspension of payments, has prevented participants of the Plan from exercising their rights under the Plan to receive distributions of benefits, withdrawals, and investment transfers with respect to the funds invested in the GIC. The applicant further represents that it is not known whether, when, or under what circumstances Confederation will resume payments on its contracts, including the interest and principal amount of the GIC. Approximately 26 percent of the Plan participants (2,423 individuals) are affected by these restrictions.

5. The Employer proposes to make the Loan to the Plan in order to permit the participants to exercise their rights under the Plan and avoid the administrative problems arising from the restrictions on investment transfers and distributions for terminated, retired, and disabled participants as imposed by the rehabilitation of Confederation. The Loan will be made pursuant to two written agreements by the Employer and the Subsidiary, respectively, with the Plan. The notes issued pursuant to the agreements will be interest-free and unsecured. The amount of the Loan will be no less than the accumulated book value of the GIC (the principal amount, plus interest at the contract rate, and minus withdrawals) as of August 12, 1994.[13] Any future interest received in accordance with the rehabilitation plan of the Circuit Court will be allocated and disbursed by the Trustee to the accounts of the participants of the Plan that are affected by the GIC. The purpose of the Loan, as represented by the applicant, is to facilitate distributions and investment transfers from the Plan by the participants and their beneficiaries. The applicant represents that repayments of the Loan by the Plan will be limited to proceeds received from Confederation, or from State Guaranty Funds, or other third-party sources. The repayment of the Loan will be waived to the extent the Loan exceeds the proceeds from the GIC and in no event will the repayment exceed the Loan.

The Trustee in its independent capacity under the Trust Agreement with the Employer of April 1, 1992, represents that it has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries. Furthermore, the Trustee represents that it will determine that the Loan when consummated will be as described herein.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the proposed transaction will permit investment transfers as well as distributions for terminated, retired, and disabled participants in the Plan; (b) the Plan will not incur interest charges or other expenses with respect to the proposed transaction; (c) the Loan will be no less than the accumulated book value of the GIC as of August 12, 1994; (d) the source of the repayment of the Loan is restricted to the proceeds under the GIC from Confederation, or a State Guaranty Fund, or other third-party sources; (e) the repayment will not exceed the total amount of the Loan; and (f) the repayment of the Loan will be waived to the extent the Loan exceeds the proceeds from the GIC.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

[12] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[13] The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to claims under section 404 of the Act in connection with any aspect of the GIC transactions.

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of April, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–10404 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–33; Exemption Application No. D–09626, et al.]

Grant of Individual Exemptions; Bank South, N.A. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bank South, N.A. (the Bank) Located in Atlanta, GA

[Prohibited Transaction Exemption 95–33; Application No. D–09626]

Section I—Exemption for In-kind Transfer of Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply as of February 11, 1994, to the in-kind transfer of assets of plans for which the Bank serves as a fiduciary (the Client Plans), other than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of the Peachtree Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act) for which the Bank acts as investment adviser, in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day using independent sources in accordance with Rule 17a–7(b) of the Securities and Exchange Commission under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(c) A second fiduciary who is independent of and unrelated to the Bank (the Independent Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(d) For all transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register** (i.e. January 30, 1995), the Bank sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each transfer, a written confirmation that contains:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(e) The conditions set forth in paragraphs (e), (f), and (m) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of February 11, 1994, to the receipt of fees by the Bank from the Funds for acting as investment adviser to the Funds in connection with the investment in the Funds by Client Plans for which the Bank acts as a fiduciary, including any Client Plan invested in a CIF which transfers its assets to a Fund, provided that the following conditions and the general conditions of Section III are met:

(a) No sales commissions, loads, charges or similar fees are paid by the Client Plans for the purchase or sale of shares of the Funds and no redemption fees are paid for the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section IV(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds from or to any Client Plan.

(d) The Client Plans do not pay any plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act or any other agreement between the Bank and the Funds which is in compliance with the 1940 Act.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) The Independent Fiduciary receives, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including, but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, as well as all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Independent Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents become available.

(i) On the basis of the information described above in paragraph (h) of this Section II, the Independent Fiduciary authorizes in writing the investment of assets of the Client Plan in each Fund, and the fees to be paid by such Funds to the Bank.

(j) All authorizations made by an Independent Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) of Section II shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) of Section II above (the Termination Form) with instructions on the use of the form must be supplied to the Independent Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Plan, upon receipt by the Bank of written notice from the Independent Fiduciary; and

(2) Failure to return the Termination Form will constitute continued authorization of the Bank to engage in the transactions described in paragraph (i) of Section II on behalf of the Client Plan.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by an Independent Fiduciary, in accordance with paragraph (i) of this Section II, the Bank will, at least thirty (30) days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Independent Fiduciary of each of the Client Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by a Termination Form. However, if the Termination Form has been provided to the Independent Fiduciary pursuant to this paragraph, then the Termination Form need not be provided again for an annual reauthorization pursuant to paragraph (j) above unless at least six months has elapsed since the form was provided in connection with the fee increase.

(l) On an annual basis, the Bank provides the Independent Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank; and

(2) upon the request of such Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information for the Fund, or some other written statement) that contains a description of all fees paid by the Fund to the Bank.

(m) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section III are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) The term ''Bank'' means the Bank South, N.A. and any affiliate thereof as defined below in paragraph (b) of this Section IV.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the Peachtree Funds, Inc., or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Independent Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this Section IV shall not apply.

(h) The term ''Termination Form'' means the form supplied to the Independent Fiduciary which expressly provides an election to the Independent Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Independent Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: The exemption is effective as of February 11, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995, at 60 FR 5713.

WRITTEN COMMENTS: The applicant submitted the following comments regarding the notice of proposed exemption (the Proposal).

With respect to the description of the fee structure, the applicant states that the Bank is using the fee offset mechanism described in Section II(d) of the Proposal for Client Plans that first invested in the Funds after the conversion date (i.e. February 14, 1994). As described in the Summary of Facts and Representations in the Proposal (the Summary), Client Plans invested in the CIFs prior to the conversion transaction (described in Section I of the Proposal) currently utilize the credit mechanism under which Plan-level trustee fees are reduced by the investment advisory fees charged at the Fund-level pursuant to Section II(c) of Prohibited Transaction Exemption (PTE) 77–4, 42 FR 18732, April 8, 1977.[1] The Bank anticipates

[1] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management,

Continued

that the offset mechanism described in Section II(d) of the Proposal will be implemented for all Client Plans as soon as practicable during the current year. Thus, it is the Bank's understanding that the exemption provided by Section II will be applicable upon implementation of the fee offset mechanism. The Department concurs with the applicant's clarification.

In addition, Sections I(c) and II(h) of the Proposal and Paragraph 8 of the Summary state that each Independent Fiduciary received from the Bank a written statement giving full disclosure of the fee structure prior to investment in the Funds. The Bank would like to clarify that the written statement received by Client Plans that participated in the conversion transaction described the PTE 77–4 credit mechanism rather than the fee offset mechanism described in Section II(d) of the Proposal. The applicant states that prior to implementation of the fee offset mechanism for Client Plans that participated in the conversion, each Independent Fiduciary will receive a written statement giving full disclosure of the fee structure described in Section II(d) of the Proposal, and the Bank will receive written authorization from the Independent Fiduciary approving the new fee structure. The Department concurs with the applicant's clarification.

With respect to fees payable under Rule 12b–1, Section II(f) of the Proposal provides that the Bank may not receive any fees payable pursuant to such Rule in connection with the investment of Plan assets in the Funds. The applicant notes that this condition is consistent with the representations made by the Bank. However, the applicant states that Paragraph 4 of the Summary overstates the representations made by the Bank with regard to 12b–1 fees and requires minor clarification. The third sentence of Paragraph 4 states that ''* * * In addition, the Bank does not and will not receive fees payable pursuant to Rule 12b–1 in connection with transactions involving any shares of the Funds.'' The Bank represents that this statement is true with respect to trust accounts, but should be clarified to limit it to transactions described under the exemption. The Bank otherwise may receive 12b–1 fees for sales of Fund shares to investors other than the Client Plans. The Department concurs with the applicant's clarification.

With respect to the responsibility for distributing updated prospectuses, Paragraph 8 of the Summary states that ''* * * Client Plan fiduciaries will also receive from Federated [Investors], the Fund's Distributor, an updated prospectus and periodic reports for each Fund.'' The applicant states that while it is true that Federated will prepare the updated prospectuses and periodic reports, these items will be distributed to Client Plans by the Bank, as trustee. The Department concurs with the applicant's clarification.

With respect to purchases and sales of Fund shares, Section II(c) of the Proposal states that neither the Bank nor any affiliate, including any officer or director of the Bank, may purchase or sell shares of the Funds to any Client Plan. In this regard, the applicant notes that the Fund's distributor will execute all purchases or redemptions of Fund shares by Client Plans. However, the applicant states that the Client Plans will place purchase and redemption orders through the Plan's account representative at the Bank. The Bank wishes to clarify that Section II(c) of the Proposal does not apply to a Client Plan's placement of a purchase or redemption order through its account representative at the Bank where the Fund's distributor executes the purchase or redemption order. The Department concurs with the applicant's clarification.

With respect to carrying out termination instructions, Section IV(h) of the Proposal and Paragraph 8 of the Summary provide that, upon receipt of an executed Termination Form, the Bank will effect the sale of Fund shares within one business day following receipt of the form; provided that if, due to circumstances beyond the Bank's control, the Bank may have one additional business day to complete the sale. In this regard, the applicant states that Fund shares may not be able to be redeemed in the event of extraordinary circumstances that result in market closure and/or other restrictions on trading mutual fund shares—e.g. natural disaster, war, etc. The Bank would like the Department to clarify that, in such event, the conditions of the exemption are satisfied provided the Bank redeems Fund shares within one business day after the market re-opens and/or Funds are able to be traded. The Department concurs with the applicant's clarification.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Delaware Trust Capital Management, Inc. (DTCM), Located in Wilmington, DE

[Prohibited Transaction Exemption 95–34; Exemption Application No. D–09853]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by certain rollover individual retirement accounts (the IRAs) of their interests in certain securities (the Securities) to DTCM, a disqualified person with respect to the IRAs, provided the following conditions are satisfied: 1) the sale is a one-time transaction for cash; 2) no commissions or other expenses are paid by the IRAs in connection with the sale; 3) the IRAs receive the greater of: a) the fair market value of the Securities as of June 30, 1994, plus accrued interest, less principal repayments received, or b) the fair market value of the Securities as of the time of the sale as determined by a qualified, independent expert.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 20, 1995 at 60 FR 14793.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Shippers Paper Products Co., 401(k) Plan (the Plan), Located in Glenview, IL

[Prohibited Transaction Exemption 95–35; Application No. D–09866]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of Group Annuity Contract, No. GA–4725 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit) to Illinois Tool Works

investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[2] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Inc., a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GAC at the time of the sale; (3) the Plan's trustee, acting as independent fiduciary for the Plan, has determined that the proposed sale price is not less than the current fair market value of the GAC; and (4) the Plan's trustee has determined that the proposed transaction is appropriate for and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 10, 1995 at 60 FR 8089.

For Further Information Contact: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of April 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–10405 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (#1189).

Date and Time: May 18, 1995; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 1120, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biochemical Engineering and Biotechnology, Room 565, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biotechnology Group Proposals.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10392 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and Times: May 17, 1995—8:00 am–5:00 pm; May 19, 1995—8:00 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 380 and 390 (May 17); Rooms 310, 340 and 390 (May 19), Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of Meetings: To provide advice and recommendations concerning support for Academic Research Infrastructure Instrumentation proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10393 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200).

Date and Time: May 16–18, 1995, 8:30 a.m. to 5:00 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1028.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Database and Expert Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10394 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (#1196).

Date and Time: May 19, 1995: 8:30 am to 5:00 pm.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate enter specific area of review proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10395 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Committee of Visitors of the Division of Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences; Committee of Visitors of the Division of Mathematical Sciences (66).

Date and Time: May 15–16, 1995 8:30 a.m. til 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bernard R. McDonald, Acting Division Director, Division of Mathematical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230, Telephone: (703) 306–1872.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Programs in the Division of Mathematical Sciences.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10396 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: May 16, 1995, 9:30 AM–5:00 PM.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Kurt W. Weiler, Adjunct Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–0035 x 7185.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Academic Research Infrastructure (ARI) Program Proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10398 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (#1194).

Date and Time: May 18, 1995 8:30 a.m.–5:00 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Hazelrigg, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Academic Research Infrastructure (ARI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10399 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Geosciences; Notice of Meeting, Committee of Visitors

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences (Committee of Visitors) #1755.

Date and Time: May 17, 18 and 19, 1995; 8:30 a.m.–5:00 p.m.

Place: Conference Room #770, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Jarvis L. Moyers, Section Head, Lower Atmospheric Research Section, Division of Atmospheric Sciences, Room 775, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1523.

Purpose of Meeting: To evaluate the administration of the research grants programs in the Lower Atmospheric Research Section of the Division of Atmospheric Sciences.

Agenda: Review and evaluate the decisions and actions of the Lower Atmospheric Research Section.

Reason for Closing: The materials being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; personal information concerning individuals associated with the proposals

handled by the NSF programs and proposal reviewers. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10400 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and Time: May 16-18, 1995 8:00 am-5:00 pm.

Place: Rooms 310, 320, 330 and 340, Stafford Place., 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–10397 Filed 4–26–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its May 16, 1990, application for proposed amendment to Facility Operating License Nos. DPR–32 and DPR–37 for the Surry Power Station, Unit No. 1 and Unit No. 2, located in Surry County, Virginia.

The proposed amendment would have referenced an analysis of the main steam line break scenarios in the Operating Licenses.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 5, 1991 (56 FR 30778). However, by letter dated April 6, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 16, 1990, and the licensee's letter dated April 6, 1995, which withdrew the application for license amendment. 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 Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 20th day of April 1995.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Project Manager, Project Directorate II-I, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–10401 Filed 4–26–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Power Company (the licensee) to withdraw its May 27, 1994, application for proposed amendment to Facility Operating License No. DPR–21 for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment would have added a new section to Technical Specification Section 6.17 which would have required that procedures be in place to provide for monitoring and sampling of emergency service water (ESW) discharge flow during accident conditions when a positive differential pressure cannot be maintained between ESW and low pressure coolant injection (LPCI) in the LPCI heat exchangers.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 7, 1994, (59 FR 29448). However, by letter dated April 18, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 27, 1994, and the licensee's letter dated April 18, 1995, which withdrew the application for license amendment. 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 Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 20th day of April 1995.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–10402 Filed 4–26–95; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Supplement to Claim of Person Outside the United States.

(2) *Form(s) submitted:* G–45.

(3) *OMB Number:* 3220–0155.

(4) *Expiration date of current OMB clearance:* June 30, 1995.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 100.

(8) *Total annual responses:* 100.

(9) *Total annual reporting hours:* 17.

(10) *Collection description:* Under Public Law 98–21 Railroad Retirement beneficiaries' Tier I or overall minimum portion of an annuity and Medicare benefits payable under the Railroad Retirement Act may be withheld effective January 1, 1985. The collection obtains the information

needed by the Railroad Retirement Board to implement the benefit withholding provisions of Pub. L. 98–21.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–10336 Filed 4–26–95; 8:45 am]

BILLING CODE 7905–01–M

Public Hearing

Notice is hereby given that the Railroad Retirement Board, acting through its designated Hearings Examiner, will hold a hearing on May 22, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The hearing will be held at the request of the CSX Intermodal for the purpose of taking evidence relating to status of their company under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The entire hearing will be open to the public. The person to contact for more information is Thomas W. Sadler, Assistant General Counsel (312) 751–4513, TDD (312) 751–4701.

Dated: April 21, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–10317 Filed 4–26–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35635; File No. SR–Amex–95–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170 Pertaining to Specialists' Liquidating Transactions

April 21, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex requests a three-month extension of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval. The pilot program also amended Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.[1]

The Exchange requests accelerated approval of the proposed rule change to enable the pilot, which would otherwise expire on April 22, 1995, to continue on an uninterrupted basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 22, 1994, the Commission approved, on a one-year pilot basis, amendments to Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval.[2] The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has monitored compliance with the requirements of the Rule and is in the process of preparing a report summarizing the results of its surveillance. In order to permit the pilot program to continue without interruption while the Exchange completes its report, it is proposing that the pilot program be extended for three months.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The proposed rule change also is consistent with Section 11(b) of the Act which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] The Commission approved the pilot program in Securities Exchange Act Release No. 33957 (April 22, 1994), 59 FR 22188 (April 29, 1994) (''1994 Approval Order'').

[2] *See* 1994 Approval Order, *supra* note 1.

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–11 and should be submitted by May 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5) and 11 of the Act.[3] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11(b) of the Act and Rule 11b–1 thereunder,[4] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.[5]

Under the current pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our 1994 Approval Order,[6] the Commission asked the Amex to submit a report setting forth the criteria developed by the Exchange to determine whether liquidating transactions effected by specialists pursuant to the pilot were necessary and appropriate in connection with fair and orderly markets. The Commission also asked the Amex to provide information regarding the Exchange's monitoring of liquidating transactions effected by specialists on any destabilizing tick. In addition, the Commission asked the Amex to provide the following information in its report: (1) A review of all liquidating transactions effected by specialists on any destabilizing ticks; (2) a review of liquidating transactions by specialists to determine that the required Floor Official approval was obtained where necessary; and (3) a review of liquidating transactions in light of dealer participation levels and re-entry into the market in terms of timing and support.[7]

During the three month extension of the pilot, the Amex will prepare the report discussed above and submit the data to the Commission for its consideration of whether the pilot program should be granted permanent approval. The Commission expects the Amex to continue to monitor compliance with the pilot program procedures during the three month extension and report any non-compliance with the rule and the action the Amex has taken as a result of such non-compliance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. The rule change that implemented the pilot program was published in the **Federal Register** for the full comment period,[8] and no comments were received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[9]

It Therefore is Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change is approved for a three month period ending on July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10331 Filed 4–26–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f and 78k (1988).

[4] 17 CFR 240.11b–1 (1994).

[5] See 1994 Approval Order, *supra* note 1, for a description of Amex Rule 170 procedures and the Commission's rationale for approving those procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order.

[6] *See supra* note 1.

[7] In the 1994 Approval Order, *supra* note 1, the Commission requested that the Amex submit the report in January 1995. Pursuant to the three-month extension of the pilot being approved herein, the Commission now requests that the Amex submit the report in May 1995.

[8] See Securities Exchange Act Release No. (August 25, 1993), 58 FR 45926 (August 31, 1993).

[9] See Securities Exchange Act Release No. 31797 (January 29, 1993), 58 FR 7277 (February 5, 1993).

[10] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34–35636; File No. SR–PSE–95–03]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Establish New Listing Fees Applicable to Small Corporate Offering Registration (''SCOR'') Securities

April 21, 1995.

On February 13, 1995, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish new fees applicable to Small Corporate Offering Registration (''SCOR'') securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35395 (February 17, 1995), 60 FR 10626 (February 27, 1995). No comments were received on the proposal.

The Commission has approved the PSE's proposal to create a separate listing tier for SCOR securities on a three year pilot basis.[3] The Exchange is adopting the following fee schedule for listing securities pursuant to the SCOR program:

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35628 (April 19, 1995).

SCOR Marketplace—Listing Fee Schedule

Original Listings

The Original Listing fees are fixed fees and issues are not charged by the number of shares being listed.
Common Stock: $5,000.00
Preferred Stock: 5,000.00

Processing Fee

*Per Original Listing Application: $500.00
Name change: 250.00
Change in Par Value: 250.00

*This is a fixed charge for the review of potential listings and is non-refundable. Issues approved for listing may have this charge credited toward the original listing fee.

Substitution of Original Listing

Per Application: Fixed charge of $750.00

Substitution may occur as a result of a change in state of incorporation, reincorporation under laws of same state, a reverse stock split, recapitalizations, or similar events.

Listing of Additional shares

Per Application: $.0025 per share
Minimum charge of $500.00
Maximum charge of $2,500.00
Maximum charge of $5,000.00 per annum

Annual Maintenance Fee

For one issue: $1,000.00
For each additional issue: 500.00

Payable January of each year following listing.

Conversion Fee

Conversion from the SCOR Market place to Tiers I or II.
Common Stock $15,000.00

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[4] In particular, the Commission believes the proposal is consistent with the Section 6(b)(4) requirements that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the Exchange's facilities.[5] The Commission believes that the fee schedule for the initial and continued listing of SCOR securities is equitable because the fees should not result in an excessive allocation of PSE fees on its issuers as opposed to members and other persons using its facilities.

The Commission notes that, except for the SCOR original listing fees, the fee schedule for SCOR securities is consistent with the Exchange's fee schedule for Tier I and Tier II securities.[6] The Commission believes that it is reasonable for the Exchange to impose a lesser initial listing fee for common stock SCOR listings because these issuers will be smaller companies listing single classes of securities. The Commission also believes that it is reasonable for the Exchange to apply the original listing fee for SCOR preferred stock and common stock because it is likely that the costs incurred by the Exchange in processing the listing applications for common and preferred stock will be the same. Additionally, the Commission believes that the conversion fee for common stock that moves from the SCOR list to the Tier I or Tier II lists is reasonable because, when added to the SCOR original listing fee, SCOR issuers will have paid the same amount for listing as those that listed common stock on the PSE directly under Tier I or Tier II.[7]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PSE–95–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10330 Filed 4–26–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b) (1988).

[5] 15 U.S.C. 78f(b)(4) (1988).

[6] The PSE's listing fees for Tier I and Tier II securities were last amended in Securities Exchange Act Release No. 34276 (June 29, 1994), 59 FR 34892 (July 7, 1994). The original listing fee for Tier I and Tier II securities is $20,000. The original listing fee for Tier I and Tier II preferred stock (secondary issuers) is $2,500.

[7] There is no conversion fee for preferred stock because the original listing fee for Tier I and Tier II preferred stock is lower than the original SCOR listing fee for preferred stock.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35634; File No. SR–NASD–94–54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 of Proposed Rule Change Relating to Position and Exercise Limits for Equity Options Overlying Equity Securities Not Subject to Standardized Options Trading

April 20, 1995.

I. Introduction

On October 12, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or '' Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On March 3 and 22, 1995, and NASD submitted amendments to the proposal.[3] The NASD proposes to amend its Rules of Fair Practice to allow, under certain circumstances, members to increase the applicable position and exercise limits[4] for conventional options[5] overlying those equity securities that are not subject to standardized options trading.[6]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Letters from Joan Conley, Corporate Secretary, NASD, to Mark Barracca, Branch Chief, SEC (Mar. 3, 1995) and Thomas R. Gira, Assistant General Counsel, Nasdaq, to Mark Barracca, Branch Chief, SEC (Mar. 22, 1995). The NASD amended its filing to provide, most significantly that: (1) To be eligible to qualify for a higher position limit, the underlying security must satisfy the initial listing standards for standardized options trading; (2) to continue to be eligible to qualify for a higher position limit, the underlying security must satisfy the maintenance criteria for standardized options trading; and (3) if the position limit is lowered, members will not be required to liquidate their position but will be prohibited from increasing it if it is above the new limit.

[4] Under NASD rules, exercise limits placed on options trading equal the limits imposed for options positions. *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 33(b)(3)(A), (CCH) ¶ 2183.

[5] A conventional option is any option contract not issued, or subject to issuance, by The Options Clearing Corporation. *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 33(b)(1)(GG), (CCH) ¶ 2183.

[6] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts and long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts which an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the

Notice of the proposed rule change appeared in the **Federal Register** on January 9, 1995.[7] The Commission did not receive any comments on the proposal. For the reasons discussed below, this order approves the proposed change, as amended.

II. Description of the Proposed Rule

A. Background and Purpose

As indicated above, the NASD proposes to allow members to increase the applicable position and exercise limits for conventional options overlying those equity securities that are not subject to standardized options trading if certain conditions are satisfied. For conventional equity options traded by any NASD member, if the underlying security is subject to standardized options trading, the NASD's position limit for conventional options on that security is the same position limit imposed by the options exchange(s) trading the option. Specifically under NASD rules, position and exercise limits for exchange-listed options traded by access firms [8] or their customers are determined according to a ''three-tiered'' system, where, depending upon the float and trading volume of the underlying security, the position limit for options on that security is 4,500, 7,500, or 10,500 contracts.[9] However, if the security underlying the option is not subject to standardized options trading, the applicable position limit for conventional options on the security is the lowest tier, *i.e.*, 4,500 contracts.

In some instances, however, a security could be eligible for standardized options trading and qualify for an options exchange position limit of 7,500 or 10,500 contracts but, for purposes of NASD position limits, it is subject to a position and exercise limit of 4,500 contracts because it does not underlie an exchange-listed standardized option. Given that these securities could qualify for higher position limits but are not eligible for them solely because there is no standardized option traded on them in the U.S., the NASD believes its option position limit rule may be unduly restrictive for these securities and unnecessarily constrain members' legitimate hedging activity. Accordingly, the NASD proposes to amend Section 33 to provide that the position limit for options on a security shall be determined by the position limit tier the security falls under, regardless of whether the security is subject to standardized options trading, as long as the security meets the initial and maintenance standards for standardized options trading.

The NASD believes its proposal is warranted for the following reasons. First, if a security has sufficient trading volume and public float to satisfy the standards for a position limit of 7,500 contracts or 10,500 contracts, the NASD does not believe that raising the position and exercise limits for conventional options on the security will adversely affect the cash market for that security. In the NASD's view, if the cash market for a security is large enough to qualify for an options position limit of 7,500 contracts or 10,500 contracts, it is irrelevant whether that security is only subject to conventional options trading and not standardized options trading. The NASD believes the primary consideration governing the appropriate position limit level for options on a security should be the characteristics and size of the underlying cash market for that security, not whether the options overlying the security are standardized or conventional. Second, the NASD does not believe its members' activities in the conventional options market should be linked to or constrained by decisions of the options exchanges concerning whether or not to trade options on particular securities.

Moreover, the NASD believes that its proposal will not compromise the stability of the securities markets underlying the conventional options eligible for the higher position limits. In this regard, for those securities that will be eligible for higher position limits under the proposal, there will only be a slight increase in the percentage of their capitalization that an investor or group of investors acting in concert can control under the new position limits.

B. New Proposal

The NASD proposes to permit position and exercise limits of up to either 7,500 or 10,500 contracts, whichever is applicable, for conventional options, if the equity security satisfies the initial criteria and other listing standards for standardized options trading and otherwise qualifies for a higher position and exercise limits of 7,500 or 10,500 contracts.[10] Prior to establishing such a higher position, the member first must demonstrate to the NASD's Market Surveillance Department that the underlying equity security satisfies the initial listing criteria for standardized options trading *and* qualifies for a higher position and exercise limit of 7,500 or 10,500 contracts. The initial listing criteria for standardized options trading are uniform among the five U.S. options exchanges (collectively referred to as the ''options exchanges''). [11] Likewise, the criteria for qualifying for a higher position and exercise limit of 7,500 or 10,500 contracts is uniform among the options exchanges.[12]

After a member has demonstrated that an equity security meets the criteria for increased position and exercise limits, the increased limit will remain in effect for all other conventional options positions established by the same or other NASD members on that equity

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applicable position limit for those options classes. *See NASD Manual*, Rules of Fair Practice, Art. III, Sec. 33(b) (3) & (4), (CCH) ¶ 2183.

[7] Securities Exchange Act Release No. 35180 (Dec. 30, 1994), 60 FR 2413 (Jan. 9, 1995).

[8] ''Access'' firms are NASD members which conduct a business in exchange-listed options but which are not members of any of the options exchanges upon which the options are listed and traded.

[9] In this connection, the NASD's rules do not specifically govern how a specific equity option falls within one of the three position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purposes of the NASD's rule. Under the rules of each of the options exchanges, if the security underlying a standardized option has trading volume of 40,000,000 shares over the most recent six-month period or trading volume of 30,000,000 shares over the most recent six-month period and float of 120,000,000, it is subject to a position limit of 10,500 contracts; if the security underlying a standardized option has trading volume of 20,000,000 shares over the most recent six-month period or trading volume of 15,000,000 shares over the most recent six-month period and float of 40,000,000, it is subject to a position limit of 7,500 contracts; and, if the underlying security is ineligible for a 10,500 or 7,500 contract position limit, it is subject to a 4,500-contract position limit. The rules of each options exchange are uniform in regard to the above. *See, e.g.*, Commentary .07 to American Stock Exchange Rule 904 and Interpretation and Policy .02 to Chicago Board Options Exchange Rule 4.11.

[10] For foreign securities, before an option is eligible for standardized options trading, market surveillance sharing arrangements must be satisfied. For the NASD to satisfy these requirements under its proposal, prior to allowing higher (7,500 or 10,500) position and exercise limits for options overlying a foreign security, the NASD will need to ensure that: (1) It has in place a comprehensive surveillance sharing agreement with the primary exchange in the home country where the foreign security is primarily traded; or (2) the combined trading volume of the foreign security (and other related securities) occurring in the U.S. markets represents at least 50% of the combined worldwide trading volume in the underlying security (including other related securities). *See* Securities Exchange Act Release No. 35554 (Jan. 31, 1994), 59 FR 5622 (Feb. 7, 1994).

[11] The five options exchanges are: Chicago Board Options Exchange (''CBOE''); American Stock Exchange (''Amex''); New York Stock Exchange (''NYSE''); Philadelphia Stock Exchange (''Phlx''); and Pacific Stock Exchange (''PSE''). *See CBOE Rules*, Rule 5.3, (CCH) ¶2113; *Amex Rules*, Rule 915, (CCH) ¶9715; *NYSE Rules*, Rule 715, (CCH) ¶2715; *Phlx Rules*, Rule 1009, (CCH) ¶3009; *PSE Rules*, Rule 3.6, (CCH) ¶3591.

[12] *See CBOE Rules*, Rules 4.11 & 4.12, (CCH) ¶2091 & 2092; *Amex Rules*, Rules 904 & 905, (CCH) ¶9704 & 9705; *NYSE Rules*, Rules 704 & 705, (CCH) ¶2704 & 2705; *Phlx Rules*, Rules 1001 & 1002, (CCH) ¶3001 & 3002; *PSE Rules*, Rules 6.8 & 6.9, (CCH) ¶4769 & 4775.

security, subject to a review to be conducted by the NASD on the Monday following the third Friday of the next January or July, whichever occurs first, and each successive January and July. The NASD's periodic reviews will be conducted to determine whether: (a) The underlying equity security continues to satisfy the options exchanges' maintenance criteria for listing standardized options upon such security;[13] and (b) the equity security continues to satisfy the criteria for higher position and exercise limits. If either test is not satisfied, the position and exercise limit will be lowered to the applicable level,[14] effective on the Monday following the third Friday of January or July.[15] If position and exercise limits are lowered, a member will not be required to reduce its position to meet the new position limit level; however, a member will not be permitted to increase its existing position if such position is greater than the new limit.[16]

Finally, the NASD recognizes that its proposal allows for the possibility that a NASD member complying with the new position limit standards might nonetheless be deemed in violation of options exchange position limit standards. Specifically, if an NASD member is also a member of one or more of the options exchanges, the member could be in violation of the respective option exchange's position and exercise limits if standardized options trading commences covering an underlying equity security for which the NASD previously granted a higher (7,500 or 10,500 contracts) limit. The potential risk arises if the options exchange position and exercise limits are lower than the NASD's limits and the member exceeds the exchange's limit.[17] While the member would not violate the NASD's rule,[18] the NASD cannot exempt its members from the options exchanges' rules. To address this potential issue, the NASD has committed to notifying its members [19] that they could be in violation of the options exchanges' rules if the options exchanges do not grant an exemption under the above described circumstances.[20]

III. Discussion

The Commission believes that the rule change is consistent with the requirements of Section 15A of the Act of the rules and regulations thereunder applicable to the NASD, and therefore, has determined to approve the proposal. Section 15A requires that the rules of the NASD, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[21]

Currently, NASD members trading conventional equity options for which there is no standardized options trading covering the underlying equity security are limited to a position of 4,500 contracts. Nonetheless, some of the equity securities underlying these conventional options meet the standards for standardized options trading but, for business or other reasons, none of the options exchanges have decided to list standardized options upon them. Moreover, some of these equity securities satisfy the criteria to qualify for options position and exercise limits of 7,500 or 10,500 contracts. However, because there are no standardized options traded upon them, the position and exercise limits remain at 4,500 contracts.

The Commission believes it is appropriate for the NASD to increase, as proposed, its applicable equity option position and exercise limits to allow its members that establish positions in conventional options the benefit of those higher limits where the underlying security fully qualifies [22] to be eligible for standardized options trading and the trading volume and/or shares outstanding for the underlying equity security warrant such increase. Moreover, the NASD has essentially agreed to review and apply the equity option maintenance standards used by the options exchanges, as well as the position and exercise limit standards, using procedures that basically mirror those that have been instituted by the options exchanges. The monitoring standards outlined above will provide that position and exercise limits are maintained at appropriate levels. Accordingly, this substitute review will allow the NASD to address those instances where the options exchange could list and trade equity options, subject to the 7,500 or 10,500 position and exercise limit tier but, for business or other non-regulatory reasons, have decided not to list such options.

Moreover, the Commission believes that the NASD proposal should not adversely affect the cash market for the underlying security. The options overlying these securities will continue to have position limits determined based on established standards.[23] In addition, NASD members will be required to aggregate with other conventional options as well as standardized options if they are subsequently listed. Accordingly, the Commission believes that this rule change will not undermine the objective of preventing the establishment of large option positions that can be used to manipulate or disrupt the underlying market to the benefit of the option position.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

[13] *See CBOE Rules,* Rule 5.4, (CCH) ¶2114; *Amex Rules,* Rule 916, (CCH) ¶9716; *NYSE Rules,* Rule 716, (CCH) ¶2716; *Phlx Rules,* Rule 1010, (CCH) ¶3010; *PSE Rules,* Rule 3.7, (CCH) ¶3597.

[14] If the maintenance criteria is not satisfied, the security would not be eligible for standardized option listing and, therefore, the position and exercise limits would return to 4,500 contracts, regardless of whether the volume and float data of the security continue to meet the criteria for a higher position and exercise limit.

[15] If, however, subsequent to the six-month review, the security becomes eligible for a higher limit prior to the next review, the NASD may increase immediately the position and exercise limit to the applicable level.

[16] Letters from Joan Conley, Corporate Secretary, NASD, to Mark Barracca, Branch Chief, SEC (Mar. 3, 1995) and Thomas R. Gira, Assistant General Counsel, Nasdaq, to Mark Barracca, Branch Chief, SEC (Mar. 22, 1995).

[17] This could occur if from the time the NASD granted a higher position and exercise limit and the time the standardized option was introduced the trading characteristics of the security changed so that the standardized option was introduced at a lower position limit.

[18] If a position limit is lowered, the NASD will not require liquidation to the new limit, but will prohibit increasing further the position. Letter from Joan Conley, Corporate Secretary, NASD, to Mark Barracca, Branch Chief, SEC (Mar. 22, 1995).

[19] The NASD will provide this notification in its Notice to Members announcing the Commission's approval of this proposal. Letter from Thomas R. Gira, Assistant General Counsel, Nasdaq, to Mark Barracca, Branch Chief, SEC (Mar. 22, 1995).

[20] NASD rules provide that, for purposes of assessing whether a member is complying with limits on options positions, standardized and conventional options positions must be aggregated. *NASD manual,* Rules of Fair Practice, Rule 33(b)(3)(A), (CCH) ¶ 2183.

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] The Commission notes that, with regard to options overlying foreign securities, the surveillance related requirements that apply to standardized options trading on foreign securities must also be met by the NASD before it allows increased conventional option position and exercise limits. *See supra* note 10.

[23] *See NASD Notice to Members 94–64,* NASD Reminds Members of Their Obligations When Trading Options (June 1994).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–94–54 and should be submitted by May 18, 1995.

V. Conclusion

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, in particular, Section 15A(b)(6). In addition, pursuant to Section 19(b)(2) of the Act,[24] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendments No. 1 and 2 in the **Federal Register.** These amendments provide that the NASD will apply initial listing and maintenance criteria consistent with the application of these criteria by the options exchanges for determining whether a security qualifies for standardized options trading. The Commission finds that no new regulatory issues are raised by these amendments and notes that prior to them, the proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–54 be, and hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10295 Filed 4–26–95; 8:45 am]

BILLING CODE 8010–01–M

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35625; International Series Release No. 804; File No. SR–NASD–94–55]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving a Proposed Rule Change Relating to the Access of West Canada Clearing Corporation and Its Members to the Automated Confirmation Transaction Service

April 19, 1995.

On October 12, 1994, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NASD–94–55) under Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to allow access by West Canada Clearing Corporation (''West Canada'') and its members to the NASD's automated confirmation transaction service (''ACT''). Notice of the proposal was published in the **Federal Register** on January 27, 1995.[2] Sixteen comment letters were received that supported the proposal.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35257 (January 20, 1995), 60 FR 5446.

[3] Letters from M. Dryhurst, Cage Manager, Levesque Beaubien Geoffrion Inc., to Secretary, Commission (February 8, 1995); Charles J. Dunlap, C.G.A., Chief Financial Officer, Haywood Securities Inc., to Secretary, Commission (February 7, 1995), Donna M. Kenny, Back Office Manager, Global Securities, to Secretary, Commission (February 9, 1995); D. Foreman, Manager, Clearing, Odlum Brown, to Secretary, Commission (February 9, 1995); B.D. Harwood, Vice Chairman, Canaccord, to Secretary, Commission (February 16, 1995); Gerald H. Powers, Senior Vice President, Cantella & Co., Inc., to Secretary, Commission (February 16, 1995); David R. Smith, Chief Financial Officer, McDermid St. Lawrence Chisholm Ltd., to Secretary, Commission (February 14, 1995); Phyllis Stevenson, Manager, Operations, Meridian Securities International Ltd., to Secretary, Commission (February 10, 1995); Steve McKee, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Tony Chan, Vice President, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Jeff Rutledge, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Gus Wahlroth, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Jack Finkelstein, Registered Representative, Golden Capital Securities Ltd., to Secretary Commission (February 14, 1995); Randy Shaw, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Rita Gatto, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Marie Martin, Vice President and Operations Manager, Midland Walywn Capital Inc., to Secretary, Commission (February 22, 1995). The comment letters are discussed in Section B below.

I. Description of the Proposal

A. Description

The NASD is amending its rule regarding ACT to allow West Canada, a nonmember of the NASD, and members of West Canada who are not members of the NASD to access this service. The NASD also is amending the ACT rule to reflect that NASD members functioning as market makers in over-the-counter equity securities are also classified as ACT participants.

The NASD created and implemented the ACT system in response to problems experienced in the wake of the October 1987 market break and at the urging of the Commission to consider accelerating efforts to generate same day compared trades.[4] ACT has three primary features: (1) Trade match processing (*i.e.*, the comparison of trade information and the submission of locked-in trades for regular way settlement to clearing agencies on a trade date or next day [''T+1''] basis);[5] (2) trade reporting for transactions in securities that are subject to real time trade reporting requirements; and (3) risk management features that provide firms with a centralized, automated environment for assessing market exposure during and after the trading day and that permit clearing firms to monitor and respond to the ongoing trading activities of their correspondents.[6]

[4] For a description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR–NASD–89–25] (order partially approving proposed rule change to permit ACT to be used by self-clearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR–NASD–89–25] (order approving remainder of File SR–NASD–89–25 to permit ACT to be used by introducing and correspondent broker-dealers).

[5] ACT uses three methods to lock-in trades: (1) Trade-by-trade match, whereby both sides of the trade are reported to ACT and matched; (2) trade acceptance, whereby one side of the trade is reported to ACT and accepted by the contra-side; and (3) aggregate volume match, whereby ACT performs a batch-type comparison at the end of each day that aggregates previously unmatched trade reports to effect a match. (For example, two identical trade reports for 300 and 400 shares of the same security may be matched with a 700 share trade report.)

[6] Among others, ACT has the following risk management capabilities. First, ACT can compute the dollar value of each trade report entered thereby allowing member firms to assess their market exposure during the trading day. Second, clearing firms can establish daily gross dollar thresholds for each correspondent's trading activity. If a correspondent reaches or exceeds the threshold, the clearing firm is so notified. Third, ACT alerts clearing firms when a correspondent reaches 70% or 100% of its daily gross dollar threshold. Fourth, ACT has a single trade limit that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of $1,000,000 or more executed by one of its correspondents. Fifth, ACT has a super cap limit set at two times the gross dollar thresholds for purchases and sales but in no

Continued

Since its implementation, ACT has functioned as an effective and efficient vehicle to compress the trade comparison cycle thereby facilitating the prompt and accurate clearance and settlement of securities transactions and enabling NASD members to know their positions and market exposure before trading commences the next day. As a facility of the Nasdaq Stock Market operated by the Nasdaq Stock Market, Inc. (''NSMI'') subsidiary of the NASD, access to the ACT system is limited to NASD members.

Providing West Canada access to ACT has been structured so that the primary parties to the arrangement are West Canada and NSMI, the NASD subsidiary that owns and operates ACT. Rather than negotiating separate contracts with each individual organization, the NASD believes that it is more efficient for NSMI to negotiate with the exchange, market, or clearing entity to which the non-NASD member belongs, in this case West Canada. Accordingly, under the rule change, West Canada operates as a service bureau to input information into ACT on behalf of West Canada members. Individual West Canada members will not be able to obtain access to ACT unless there is first an overriding, umbrella-type agreement reached between NSMI and West Canada. Thus, whenever NASD members transact with West Canada members in ACT eligible securities, they will be able to use ACT just as they do now for comparing regular-way trades with other NASD members.

Under the rule change a nonmember clearing organization will not be given access to ACT unless it: (1) Is a clearing agency registered under the Act; (2) maintains membership in a registered clearing agency; or (3) maintains an effective clearing arrangement with a registered clearing agency. West Canada has an effective clearing arrangement with the Midwest Clearing Corporation (''MCC'') and thus satisfies this requirement.[7] New section (b)(5)(B) of the ACT Rules provides that West Canada must execute a Non-member Clearing Organization ACT Participant Application Agreement. This agreement requires West Canada to abide by the ACT rules and regulations and will ensure that West Canada members' trades processed through ACT will be accepted for clearance and settlement by West Canada. The agreement also addresses NSMI concerns over nonpayment of service charges, the financial exposure and liabilities of the parties, and methods of redress should West Canada or a West Canada member fail to comply with the relevant NASD rules and regulations. In addition, new Section (b)(5)(B)(6) of the ACT Rules provides that West Canada will not be able to input information into ACT on behalf of a West Canada member unless such member also enters into a Non-Member ACT Access Participant Application Agreement with NSMI. In the case of a clearing broker, this agreement provides that the member will accept and will settle each trade that ACT identifies as having been effected by such member of any of its correspondents on the regularly scheduled settlement date. In the case of an order entry firm, the firm must agree to accept and settle each trade that it has effected or, if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each ACT-identified trade by the clearing member on the regularly scheduled settlement date.

Separately, the proposal also amends the ACT Rules to expand the term ''Participant'' to include NASD member firms that function as market makers in over-the-counter (''OTC'') equity securities that are eligible for clearing via the National Securities Clearing Corporation's (''NSCC'') facilities.[8] The instant modification will clarify that ACT participant status encompasses NASD members that function as market makers in such securities via the OTC Bulletin Board service or another interdealer quotation system.[9]

B. Comments

The Commission received sixteen comment letters supporting approval of the filing.[10] The commenters believe that allowing West Canada and its participants to submit trade input to ACT for comparison will improve the timeliness of trade confirmation which is essential to meeting the June 7, 1995 three business day settlement cycle.[11]

II. Discussion

The rule change stems from a request from West Canada to NASD for access to ACT for trade comparison purposes only.[12] Prior to this rule change, when an NASD member effected a transaction with a West Canada member, the transaction typically was compared, cleared, and settled in the following manner. The NASD member entered the trade into ACT with the West Canada member designated as the contra-party. Because the West Canada member was not an ACT participant, ACT responded to the NASD member ''contra-side not ready.'' ACT then reported the trade for trade reporting purposes and transmitted the trade to NSCC as a one-side trade for trade comparison. The West Canada member submitted the trade information to West Canada that in turn sent the trade to MCC. MCC then transmitted the trade report to NSCC by 2:00 a.m. on T+1 for comparison. NSCC then compared the trade reports, and assuming there was a match, NSCC submitted the West Canada member's side of the transaction to MCC for clearance and settlement; the NASD

event less than $1 million that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of $200,000 or more executed by one of its correspondents once the limit is surpassed.

[7] In January 1983, MCC, Midwest Securities Trust Company (''MSTC''), the Vancouver Stock Exchange, and the Vancouver Stock Exchange Service Corporation (''VSESC''), (now known as West Canada Clearing Corporation [''WCCC'']) (''VSESC/WCCC'') created the American and Canadian Connection for Efficient Securities Settlements (''ACCESS''). Through ACCESS, over-the-counter securities transactions between the U.S. and Canadian broker-dealers in both U.S. and Canadian securities are compared, cleared, and settled. Trades between U.S. and Canadian broker-dealers involving securities listed on U.S. securities exchanges, Canadian securities exchanges, or the National Association of Securities Dealers Automated Quotation (''NASDAQ'') System are eligible for clearance and settlement through ACCESS. To establish ACCESS, VSESC/WCCC became an MCC/MSTC participant, and opened separate sponsored MCC/MSTC accounts for Canadian broker-dealers that were participants of VSESC. As an MCC/MSTC member, VSESC/WCCC is liable as principal (*i.e.*, guarantees) all trades that it submits including all trades in its sponsored accounts. Some safeguards on ACCESS activity include, contributions by VSESC/WCCC to MCC/MSTC's participant fund based on VSESC/WCCC's total activity, and a cash reserve of over 250,000 Canadian dollars maintained by VSESC/WCCC to be used to satisfy the obligations of any VSESC/WCCC participant that may become insolvent. In addition, VSE guarantees all VSESC/WCCC liabilities to MCC/MSTC. Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, to Michael Wise, Associate Counsel, MCC/MSTC (September 12, 1985).

[8] Securities Exchange Act Release No. 30415 (February 26, 1992), 57 FR 7829 [File No. SR–NASD–92–5] (order approving OTC Equity Securities as ACT eligible securities).

[9] Under Schedule D to the NASD By-Laws, Part XII, Section 1(d) defines ''OTC Market Maker'' to mean any NASD member that holds itself out as being a market maker in any OTC Equity Security by entering proprietary quotations or indications of interest in an inter-dealer quotation system.

[10] *Supra* note 3.

[11] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6–1). On November 16, 1994, the Commission changed the effective date of Rule 15c6–1 from June 1, 1995, to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[12] The present filing solely addresses the access of West Canada to ACT. Other proposals concerning nonmember access to ACT, if any, will be raised in separate rule filings submitted pursuant to Section 19 of this Act.

member's side of the transaction was retained by NSCC for clearance and settlement. If there was a discrepancy concerning the terms of the transaction, the trade reconciliation process involved the two clearing corporations and the two parties to the transaction and might last until three days following the trade date. Although the NASD believes that the facilities of NSCC and MCC have been used to compare trades between NASD and West Canada members adequately, the NASD believes the trade comparison procedure for these trades would be streamlined and made more efficient through the use of ACT.

The NASD does not believe that granting West Canada and West Canada members access to ACT will jeopardize the integrity of ACT or any other market facility operated by NSMI. In this regard, before West Canada or any of its members are granted access to ACT, these entities must agree to be bound by the terms of the revised ACT Participant Application Agreements, which establish the terms and conditions under which West Canada and its members will receive access to ACT. The revised Agreements will provide an adequate and sufficient surrogate for NASD membership which otherwise would provide the jurisdictional nexus to ensure compliance with applicable NASD rules and regulations. Initial and continuing access to ACT by nonmembers will be specifically conditioned upon adherence to the terms and conditions of these agreements. West Canada and West Canada members also will be required to maintain the physical security of the equipment used to input trades into ACT. Based on these factors, the NASD believes that granting West Canada and West Canada members access to ACT will not compromise the integrity or operation of Act.

The Commission believes that the proposed rule change is consistent with Section 15A(b)(6)[13] of the Act which requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a nationl market system, and, in general, to protect investors and the public interest. The Commission believes the proposal fosters cooperation and coordination with persons engaged in clearing and settling securities transactions by helping to eliminate the inefficiencies inherent in the practice of submitting two-sided transaction reports to two separate clearing corporations. The proposal should help streamline and improve the process by which trades between NASD and West Canada members are compared. In addition, by compressing the time-period in which open trades are left uncompared, market participants will be better able to access and evaluate their market exposure thereby contributing to fair and orderly markets and the protection of investors and the public interest. Moreover, ACT generally achieves locked-in trades within minutes of an execution thus resulting in faster and more efficient trade reconciliation, confirmation and increased efficiency of back office operations which the Commission believes is necessary for compliance with Rule 15c6–1 mandating settlement on T+3.[14]

[13] 15 U.S.C. 78o–3(b)(6) (1988).

[14] *Supra* note 11.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 15A(b)(6) of the Act and the rules and regulations thereunder.

It is therefore ordered, purusant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–94–55) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10296 Filed 4–26–95; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35628; File No. SR–PSE–94–31]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to the Listing and Trading of Small Corporate Offering Registration (''SCOR'') Securities on the Exchange

April 19, 1995.

I. Introduction

On December 15, 1994, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change to permit the Exchange to list and trade Small Corporate Offering Registration (''SCOR'') securities. On April 12, 1995, the Exchange submitted Amendment No. 1 to the proposal.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35140 (December 22, 1994), 60 FR 159 (January 3, 1995). No comments were received on the proposal.[4] This order approves the PSE's SCOR listing on a three year pilot basis.[5]

II. Description

The SCOR listing would be a new tier of listed securities that would not qualify for listing on the PSE under either its Tier I or Tier II listing criteria.[6] Under the SCOR designation, issuers may list any single class of common or preferred stock[7] that was issued pursuant to either Regulation A or Rule 504 under the Securities Act of 1933 (''Securities Act'').[8] The listing of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from Michael Pierson, PSE, to Katherine Simmons, SEC, dated April 12, 1995 (''PSE Letter''). The Amendment clarified certain aspects of the SCOR program, *see infra* notes 12, 16, and 26, and made non-substantive changes to the SCOR Rules. Notice of the Amendment was therefore unnecessary.

[4] The PSE originally proposed to list and trade SCOR securities in 1992. That proposal was published for public comment in Securities Exchange Act Release No. 32514 (June 25, 1993), 58 FR 35496 (July 1, 1993) (File No. SR–PSE–92–42). The Commission received several comment letters regarding the proposal, and subsequently published amendments to the proposal for public comment in Securities Exchange Act Release No. 34328 (July 7, 1994), 59 FR 35776 (July 13, 1994). The Exchange withdrew File No. SR–PSE–92–42 on November 22, 1994, and submitted the instant filing that includes modifications to the proposal in response to comments from the public and from Commission staff.

[5] The PSE will evaluate the SCOR listing program at least on an annual basis to determine whether this new marketplace has achieved its policy objectives, which the Exchange states are to facilitate capital formation for small businesses and to provide public market liquidity for the securities of these small businesses.

[6] The Commission approved the PSE's two-tiered listing criteria for its regular listings in Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 50950 (August 1, 1994).

[7] Once a class of SCOR securities has been accepted for listing on the Exchange, all securities of that class will be listed and traded on the Exchange as SCOR securities, except those securities of the class that are subject to restrictions that make them ineligible for trading on the Exchange.

[8] Under Regulation A, public offerings of up to $5 million in a twelve-month period are exempt from registration under the Securities Act. See 17 CFR 230.251 to 230.263 (1994). Rule 504 of Regulation D provides an exemption from registration for limited offerings and sales of securities not exceeding $1,000,000. See 17 CFR 230.504 (1994).

securities under the SCOR designation will not provide issuers with the exemption from state securities registration requirements accorded to exchange-listed securities by most states.[9] Furthermore, SCOR securities will not be eligible for marginability and must be paid for in full.[10]

A. Initial Listing Standards

The qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. Applications for listing will be reviewed by the Exchange's Listing Department, which works directly with the Equity Listing Committee. The Equity Listing Committee is comprised of floor members, ''upstairs'' members, and member firm representatives.

The initial listing requirements for common and preferred stock [11] must be met at the time an issuer applies for listing.[12] The Exchange may accept applications to list a SCOR offering if the securities have been registered at the state level,[13] and if there are at least 150,000 publicly held shares and at least 250 public beneficial holders of the class of securities. In addition, issuers must have total net tangible assets of at least $500,000 and total net worth of at least $750,000. The last offering price in the class of security for which the issuer is applying must have been at least $5 per share.[14]

In addition to the quantitative listing requirements, when reviewing an application for listing, the Exchange will consider other factors such as (1) a company's management plan outlining the development of its business for a period of at least 24 months,[15] (2) the background and past conduct of officers, directors, principal shareholders, and key employees of the company, (3) the adequacy of the company's resources to conduct its business,[16] and (4) any material changes in the financial condition of the company or other events that could have an impact upon the value of the security to be listed. In addition, the Exchange will consider all other available information that may be relevant to its review of listing eligibility.[17]

SCOR issuers will be required to comply with the corporate governance requirements and disclosure policies applicable to all securities listed on the Exchange.[18] The corporate governance provisions include rules concerning conflicts of interest, quorum, shareholder approval, annual meetings, and solicitation of proxies and consents. The corporate disclosure policies provide guidance to companies in making appropriate public disclosure and include information regarding consultation with the PSE Listings Department, internal handling of confidential corporate matters, and relationships between company officials and others.[19]

B. Maintenance Standards

The SCOR maintenance standards require that there are at least 100,000 publicly held shares with a market value of at least $500,000, at least 200 public beneficial holders, and a last sale price of at least $1 per share. In addition, the issuer must maintain total net tangible assets for at least $250,000 and total net worth of at least $500,000. A company with a deficiency in either market value of public float or market price will be subject to delistings procedures should the deficiency exist either for a majority of business days of any three-month period, or for any period of ten consecutive business days.[20] If there is a deficiency in any other quantitative standard, the Exchange will immediately suspend dealings in the security and subject the company to delisting proceedings.

SCOR securities also will be subject to suspension and/or withdrawal from listing and registration as a listed issue if the Exchange finds that the listed company fails to comply with the Exchange's listing policies or agreements.[21] Furthermore, an issuer of SCOR securities must take appropriate steps to ensure that no such securities are sold on its behalf in reliance upon the exemption from state securities registration that is otherwise available to companies listed on the Exchange. If an issuer fails to take such steps, the Exchange will immediately suspend

[9] The PSE Rule states that SCOR securities ''shall not be considered to be 'listed' or 'approved for listing upon notice of issuance' for purposes of any exemption from filing for issuer or non-issuer transactions under the securities laws or regulations of any state or other jurisdiction of the United States.'' *See* PSE Rule 3.2(t), Commentary .03.

[10] The rule change amends the PSE's Maintenance Margin Rule to prove that:

Rule 2.16(b). The margin which must be maintained in margin accounts of customers, whether members, allied members, member firms or non-members, shall be as follows:

* * *

(5) In the case of securities listed pursuant to Rule 3.2(t) [SCOR securities], 100% of the market value, in cash, of each security held ''long'' in the account.

[11] In formulating the listing requirements for SCOR securities, the Exchange consulted with the Small Business Capital Formation and Small Business Sales Practices Committees of the North American Securities Administrators Association (''NASAA''), the California Department of Corporations, and leaders from the small business community.

[12] The Exchange will not grant ''conditional'' approvals, *i.e.*, approvals conditioned on the satisfaction of the listing criteria sometime in the future. *See* PSE Letter, *supra* note 3.

[13] Issuers must register the securities to be listed at the state level using either the state Form U–7 (or the equivalent registration form to which a regulatory review is applied), or a coordinated state filing with the federal Form 1–A offering statement. Once an issuer's class of common or preferred stock has been approved for SCOR listing, the securities must be registered under Section 12(b) of the Act.

[14] The Exchange will consider the offering price of individual separate SCOR offerings in a class of securities to help determine whether the value of the SCOR securities to be listed is at least $5 per share. The Exchange will consider the circumstances of SCOR offerings so that issuers will not be able to effect ''token'' offerings in order to satisfy the $5 requirement. See also PSE Rule 3.2(t)(6)(iv) (stating that the exchange will consider whether there have been material changes in the financial condition of the company or other events that could have a significant adverse impact upon the value of the SCOR securities to be listed).

[15] The management plan must demonstrate that the product, service, or technology is sufficiently developed and that there is a reasonable expectation of future earnings from its business. The listing of companies that have done blank check offerings will not be permitted.

[16] The PSE will not list any company with an outstanding ''going concern'' opinion from its independent auditor. *See* PSE Letter, *supra* note 3. See also PSE Rule 3.5(s) (Exchange considers delisting a security upon the issuance of an independent public accountant's disclaimer opinion on financial statements).

[17] The Exchange generally will not list a company if the business in which it is engaged is not anticipated to produce profits within a reasonable period of time, if the business operations depend upon the development of a product or system that will not be completed prior to listing, or if preliminary objectives upon which the profit-making ability of the business depends have not been achieved.

[18] See PSE Rule 3.3. SCOR securities are subject to all of the corporate governance requirements contained in PSE Rule 3.3 except the independent directors/audit committee requirement of Rule 3.3(b).

[19] The PSE's proposed fee schedule for SCOR securities was published in Securities Exchange Act Release No. 35395 (February 17, 1995), 60 FR 10626 (February 27, 1995).

[20] In each instance, for purposes of the maintenance standards, the market price and the market value of public float will be calculated by using the last sale of the trading day. Should no transactions be effected in the security on a given trading day, the prevailing closing bid price will be used in determining the market value of public float and the last sale price of a security. In the event that there is not a bid price readily available, the Exchange will rely on other recognized established securities markets in which the issue is traded to determine the market value of public float and the last share price.

[21] Other factors the Exchange will consider include, among others, the issuance of an independent public accountant's disclaimer opinion on financial statements required to be certified and losses which are so substantial that, in the opinion of the Exchange, it appears questionable as to whether a company will be able to continue operations. In addition, the Exchange would examine a company that has depleted, sold or otherwise disposed of its principal operating assets, or substantially discontinued the business that it conducted at the time it was listed, or that has been authorized to liquidate its assets. *See* PSE Rule 3.5(s).

dealings in the security and subject the company to delisting proceedings. Whenever the Exchange staff determines that a security should be removed from the list, the issuer will be given an opportunity to present to the Equity Listing Committee any reasons why the security should not be delisted. A decision by the Equity Listing Committee to delist a security may be appealed to a Board committee or a committee appointed by the Board of Governors for such purpose.[22]

C. Trading and Transaction Reporting

The Exchange will allocate SCOR securities to Exchange specialists for auction market trading. All transactions in SCOR securities will be reported on a real-time basis, and will be identified by a ''.SC'' suffix to the ticker symbol. All of the PSE's rules and equity surveillance procedures will be applicable to transactions in SCOR securities.

III. Discussion

A. Introduction

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6 and 11A.[23] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. Section 11A generally promotes the development of a national market system for securities to assure economically efficient execution of securities transaction; fair competition among brokers and dealers, among exchange markets and markets other than exchange markets; the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; the practicability of brokers executing investors' orders in the best market; and an opportunity for investors' orders to be executed without the participation of a dealer.

B. SCOR Marketplace

In general, the Commission believes the PSE's SCOR listing program should provide benefits to investors as well as small companies listed under the program. The SCOR listing standards will provide small companies who would not otherwise be eligible for exchange trading with an opportunity to list securities on a national securities exchange for the first time. The Commission believes that the availability of an exchange listing as an alternative to solely over-the-counter (''OTC'') trading will provide an additional trading mechanism that could increase capital committed to trading SCOR securities. In addition, the availability of the SCOR listing on the PSE will enhance SCOR issuer access to the U.S. capital markets.

The Commission believes investors in small companies also will benefit from exchange trading of SCOR securities. Each SCOR security traded on the PSE will be handled by an Exchange specialist who is required to commit capital to maintain fair and orderly markets. Furthermore, trading of SCOR securities on the Exchange will be subject to the PSE's trading and surveillance rules. The Commission believes exchange trading with appropriate market surveillance should improve the quality of market making in SCOR securities. In addition, transactions in SCOR securities will be broadcast over the Consolidated Tape System (''CTS'') and the Consolidated Quote System (''CQS'') Network B as local issues.[24] The Commission believes this real-time reporting and wide dissemination of quotations and transactions in SCOR securities should result in more efficient and fair markets for the securities. Finally, because exchange-trading of SCOR securities requires the companies to register under Section 12(b) of the Act and to comply with the disclosure requirements of the federal securities laws, listing may provide investors with greater access to information about SCOR issuers.

The Commission recognizes, however, that the listing standards for SCOR issuers are significantly lower than those for regular PSE-listed issuers and that the markets for SCOR securities normally may not be as liquid and deep as those for regular PSE-listed securities. The Commission therefore has considered carefully the PSE's proposal, and for the reasons stated below, believes the SCOR proposal satisfies the requirements of the Act.

C. SCOR Listing Standards

In general, the Commission believes the development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is necessary to ensure that only *bona fide* companies with sufficient public float, investor base, and trading interest to support a fair and orderly auction market will be listed. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.[25] Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the PSE with appropriate standards to determine which securities warrant listing under the Exchange's new SCOR designation.

The Commission believes that the initial and maintenance criteria for SCOR issuers, as described above, are consistent with Sections 6(b)(5) and 11A of the Act in that these criteria should help to ensure the maintenance of fair and orderly markets for SCOR securities, as well as enhance benefits and protections for investors who trade in these securities. Specifically, the numerical listing and maintenance criteria include minimum requirements for public float and outstanding shares. While these are lower than the regular PSE listing standards, they are high enough to ensure that some minimum level of public interest and liquidity will be available in SCOR securities. Although these lower standards might not be sufficient for regular listings, they are acceptable for SCOR securities given the benefits noted above that the listing of such securities would produce (in particular, the increased information disclosure).

The Commission believes the quantitative SCOR listing standards are adequate to ensure that fair and orderly markets can be maintained. This conclusion is reinforced by the PSE's decision not to accept applications from issuers until they meet the minimum numerical listing criteria.[26] The

[22] If a security is delisted, the Exchange must submit an application to the Commission to strike the security from listing and registration. A copy of such application will be provided to the issuer in accordance with Section 12 of the Act. See 15 U.S.C. 78*l*(d) (1988).

[23] 15 U.S.C. §§ 78f and 78k–1 (1988).

[24] SCOR securities will be identified by a ''.SC'' suffix to the ticker symbol so that members, public investors, and others can distinguish SCOR securities from other securities traded on the Exchange.

[25] See, e.g., In re Silver Shield Mining and Milling Company, Securities Exchange Act Release No. 6214 (March 18, 1960) (''use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act''); In re Consolidated Virginia Mining Co., Securities Exchange Act Release No. 6192 (February 26, 1960) (same).

[26] In addition, a SCOR-listed issuer that becomes eligible for trading on the Exchange under its Tier I or Tier II criteria may ''graduate'' to the main lists.

Continued

Commission believes that making satisfaction of the numerical listing criteria mandatory before the Exchange considers whether an issuer is appropriate for exchange trading should help safeguard the integrity of the exchange market and the securities listed thereon.

In addition to the quantitative standards, the Exchange considers other qualitative factors such as an issuer's management plan, the background of officers and directors, and the adequacy of the company's resources. The Commission believes that these factors, combined with other Exchange rules regarding corporate governance and disclosure policies, will help to ensure that only companies with sufficient business plans and resources will have access to the PSE's public market.

The Commission believes that the PSE's proposal for SCOR listings will provide it with the necessary flexibility to determine whether a SCOR issuer is appropriate for exchange trading,[27] irrespective of whether it meets the minimum quantitative listing criteria. Thus, the Commission believes that the new listing and maintenance standards strike the appropriate balance between protecting investors and providing a marketplace for small issuers satisfying the disclosure requirements under the federal securities laws.

D. Margin

As discussed above, the PSE is amending Exchange Rule 2.16 to require that SCOR-listed securities be subject to a 100% maintenance margin requirement. The Commission agrees with the maintenance margin approach proposed by the PSE. The SCOR program is intended to be a new marketplace that attracts issuers that might otherwise trade OTC. It is logical that the maintenance margin treatment for OTC securities would apply to SCOR issuers, rather than the treatment accorded regular PSE companies.[28]

E. State Law Concerns

The Commission believes that the safeguards the PSE has established should make clear to PSE members and SCOR issuers listed under the new program that the offer and sale of SCOR securities are subject to state registration and rules. The PSE proposal would prohibit SCOR issuers from using the exemption from registration requirements that the securities laws of some states currently make available to other PSE-listed companies. To accomplish this, the PSE included in its rules that SCOR issuers would not be able to take advantage of existing exemptions in state securities registration requirements accorded to regular PSE-listed securities. In addition, the SCOR rules state that the Exchange will delist any company that fails to take appropriate steps to ensure that no SCOR-listed securities are sold on its behalf in reliance upon the exemption from state securities registration that is otherwise available to companies listed on the Exchange.

F. Review Procedures

The Commission believes the Exchange has proposed adequate procedures to screen applications for SCOR listing. The Exchange's Listing Department staff initially will review applications to confirm that all quantitative listing criteria have been met and evaluate issuers according to the qualitative standards discussed above. The staff will reject applications that fail to meet the quantitative standards. The staff also has discretion to reject applications that have qualitative deficiencies. Applications not rejected by the staff are submitted to the Equity Listing Committee for evaluation. The Equity Listing Committee must approve all applications before new SCOR listings may be accepted by the Exchange.

G. Pilot

Finally, the Commission believes it is appropriate to approve the SCOR program on a three-year pilot basis. This pilot will provide the Exchange, SCOR issuers, and investors with sufficient time to gain experience with the program. In addition, during the pilot, the PSE should monitor and evaluate the SCOR program so that the Commission can assess the benefits of the SCOR listing. The PSE should file a report with the Commission if they determine to request an extension of the pilot or seek permanent approval. The report should contain information on the number of SCOR listing applications accepted and rejected, the SCOR securities that have been delisted and the reasons therefore, the number of SCOR securities that have moved to the PSE's regular market or another market, and quantitative data on the trading history of SCOR securities (including average price per share and trading volume).

IV. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it on a three-year pilot basis. The rule change establishes quantitative and qualitative listing criteria for SCOR securities that provide for the protection of investors and the public interest. Furthermore, the SCOR listing program should provide benefits to investors and small companies by providing for the exchange-trading of SCOR securities, which should result in added liquidity, price discovery, and regulatory oversight.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–PSE–94–31) is approved on a pilot basis through April 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–10297 Filed 4–26–95; 8:45 am]

BILLING CODE 8010–01–M

However, companies on the Exchange's main lists may not move down to the SCOR listing program. *See* PSE Letter, *supra* note 3.

[27] PSE Rule 3.2(t)(6) states: ''Notwithstanding that a company meets the prescribed listing requirements, the Exchange retains the discretion to refuse listing to a company where it believes it is in the public interest to do so.''

[28] Non-MNS OTC securities are not marginable unless they are included in the Federal Reserve Board's OTC Margin List. The PSE will require 100% margin on SCOR securities whether or not they are included on the Federal Reserve Board's OTC Margin List.

[29] 15 U.S.C. 78s(b)(2) (1988).

[30] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2193]

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on May 19, 1994, from 9:30 am to 12 noon in Room 6103 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting is to seek input from the public to assist development of the U.S. position regarding the application of the precautionary approach to the International Maritime Organization's (IMO) work.

At the 35th Session of the Marine Environmental Protection Committee (MEPC) of IMO in March, 1994, a Correspondence Group was established

with the following terms of reference: ''To develop guidelines on the application of the precautionary approach as set out in Principle 15 of the Rio Declaration, as well as paragraphs 17.21 and 17.22 of the United Nations Conference on Environment and Development, Agenda 21, in the context of specific IMO activities, and to report to the MEPC at its thirty-seventh session''.

Work was carried out intersessionally to identify a working method to internalize the application of the precautionary approach. This work was carried into the 36th Session of the MEPC in November, 1994 where a drafting group developed draft ''Guidelines on the Application of the Precautionary Approach in the Context of Specific IMO Activities''. In this draft, the precautionary approach is further elaborated for the purpose of IMO. Additionally, the drafting group developed a draft ''Framework for Implementation of the Precautionary Approach within the Programs and Activities of IMO'' which provides a working method to be used by IMO Committees, Sub-Committees, Working Groups and other IMO bodies to internalize the precautionary approach into the process of policymaking and management.

The draft Guidelines and Framework are the subject of further consideration by the intersessional correspondence group, working toward tabling these documents at the 37th Session of the MEPC.

Input or comments from the public meeting will be considered by members of the U.S. correspondence group in finalizing the U.S. position on these documents. For further information or copies of the drafts, contact the project officer, Commander Mike Farley, U.S. Coast Guard Headquarters (G–MEP–3), 2100 Second Street SW., Washington, DC 20593–0001, Telephone: (202) 267–2850.

Dated: April 18, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–10338 Filed 4–26–95; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2194]

Shipping Coordinating Committee; Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping (STCW); Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 am on Tuesday, June 13, 1995, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Conference). Preparations for the International Conference on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW–F Conference) will also be discussed. These Conferences are being convened by the International Maritime Organization (IMO), in London, from June 26 to July 7, 1995.

The STCW Conference is being held to consider adoption of amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention). The United States became a party to this convention in 1991; and 107 countries are now parties.

The proposed amendments to the STCW Convention were prepared by the IMO Sub-Committee on Standards of Training and Watchkeeping and were approved for circulation by the sixty-fourth session of the IMO Maritime Safety Committee.

Items of particular interest include—

—The role of IMO in overseeing compliance with convention requirements;
—Basic safety and familiarization training for all shipboard personnel;
—Standards of competence based on demonstration of skills;
—Use of simulation in training and assessment;
—Quality assurance in training, assessment and certification;
—Alternative, function-based certification systems;
—Principles to be observing in keeping a watch;
—Prevention of fatigue; and
—Port State control.

The STCW–F Conference is being held to consider adoption of a new convention which would apply to fishing vessel personnel. Fishing vessels are excluded from the scope of application of the STCW Convention.

Items of particular interest include—

—Certification requirements for skippers, deck watch officers and engineers on seagoing fishing vessels of 24 meters or more in length; and
—Prospects of U.S. ratification of this new instrument.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: April 19, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–10339 Filed 4–26–95; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2192]

Shipping Coordinating Committee; International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m., on Thursday, May 18, 1995, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The purpose of this meeting is to report on the 72nd Session of the International Maritime Organization (IMO) Legal Committee held April 3–7, 1995, and to begin preparations for the 73rd Session to be held October 9–13, 1995.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The second major subject, which will be considered at approximately 11:30 a.m., will be possible revisions to the 1976 Convention on Limitation of Liability for Maritime Claims ('76 LLMC).

The current draft of the HNS Convention imposes strict liability upon the shipowner with an additional international fund (second-tier fund) modeled after the International Oil Pollution Compensation Fund. The draft HNS Convention provides compensation for environmental damage as well as personal injury, death, and property damage from a broad range of substances. At the 72nd Session, the Legal Committee finalized decisions on several major issues regarding the draft HNS Convention. Other issues will remain open for the diplomatic conference, which is tentatively scheduled for Spring 1996. The 72nd Session was the last session of the Legal Committee to discuss the HNS Convention before the diplomatic conference. The views of the public are requested.

The Legal Committee resumed deliberations on the '76 LLMC at the 72nd Session. Discussion centered on a draft protocol which provides for raising

the limits of liability and a streamlined tacit amendment procedure, and several key decisions were made regarding limits for passenger claims. The protocol to the '76 LLMC will also be the subject of the Spring 1996 diplomatic conference, on an equal priority with the HNS Convention. Therefore, the 72nd session was also the last session of the Legal Committee to discuss substantive revisions to the '76 LLMC. Although the United States has not ratified the '76 LLMC, interests within the United States—such as owners of foreign flag vessels and passengers on foreign flag vessels—may be affected by changes to the Convention. The views of the public are requested.

At the 73rd Session of the Legal Committee, preliminary negotiations will take place regarding an international convention on offshore mobile craft and an international convention on wreck removal. The eighth session of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages will meet October 9–10, the first two days of the 73rd Session of the Legal Committee, to finalize a draft international convention on the arrest of ships.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Commander Steve D. Poulin, U.S. Coast Guard (G–LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: April 19, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–10340 Filed 4–26–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 17, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 21, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 124CE
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 23.562(d)
Description of Relief Sought: To permit certification of the AT–602, which will have a stall speed (Vso) greater than the 61-knot requirement.

Docket No.: 27824
Petitioner: Aaron C. Bornstein, M.D.
Sections of the FAR Affected: 14 CFR 61.113(a)(2) and/or 61.131(a)(2)
Description of Relief Sought: To permit Dr. Bornstein to take the written and practical tests to add a private rotorcraft category rating to his commercial pilot certificate without having logged the required solo flight time, or to add a commercial pilot rotorcraft rating to his certificate without the required pilot-in-command flight time.

Docket No.: 28068
Petitioner: Bombardier, Inc.
Sections of the FAR Affected: 14 CFR 91.211(b)(1)(ii)
Description of Relief Sought: To permit operation of Canadier Global Express aircraft at altitudes above 41,000 feet mean sea level without requiring that at least one pilot at the controls of the airplane wear an oxygen mask.

Docket No.: 28080
Petitioner: Mr. Joseph J. Hass
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Hass to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28082
Petitioner: Mr. William H. Poarch
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Poarch to act as a pilot in operations conducted under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 28088
Petitioner: Mark Air, Inc.
Sections of the FAR Affected: 14 CFR 121.481 and 121.483
Description of Relief Sought: To allow Mark Air, Inc., to conduct all of its operations under the flight time limitations and rest requirements for domestic air carriers instead of the flight time limitations and rest requirements for a combination of flag and domestic air carriers.

Docket No.: 28169
Petitioner: Aviation Technologies, Inc.
Sections of the FAR Affected: 14 CFR 141.35(b)(3) and (d)(3)
Description of Relief Sought: To permit Aviation Technologies, Inc., to designate Mr. Richard A. Fischer to serve as chief flight instructor without meeting certain experience requirements for such a designation.

Disposition of Petitions

Docket No.: 24187
Petitioner: Florida Department of Law Enforcement
Sections of the FAR Affected: 14 CFR 91.159(a) and 91.209(a) Description of Relief Sought/Disposition: To extend Exemption No. 3596, as amended, which allows the Florida Department of Law Enforcement relief from the

pertinent provisions of part 91 of the FAR in order to conduct drug law enforcement air support.

Grant, March 30, 1995, Exemption No. 3596E

Docket No.: 26599
Petitioner: Regional Airline Association
Sections of the FAR Affected: 14 CFR 91.203
Description of Relief Sought/Disposition: To extend Exemption No. 5515, as amended, which permits temporary operation of Regional Airline Association's U.S.-registered aircraft in domestic airline operations without the certificate of airworthiness or registration, or both, on board the aircraft.

Grant, April 7, 1995, Exemption No. 5515B

Docket No.: 27142
Petitioner: Horizon Helicopters
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5714, which permits Horizon Helicopters to operate certain aircraft, under the provisions of part 135 of the FAR, without a TSO–C112 (Mode S) transponder.

Grant, April 7, 1995, Exemption No. 5714A

Docket No.: 27220
Petitioner: Mountain Rotors, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5724, which permits Mountain Rotors, Inc., to operate certain aircraft, under the provisions of part 135 of the FAR, without a TSO–C112 (Mode S) transponder.

Grant, April 7, 1995, Exemption No. 5724A

Docket No.: 27418
Petitioner: National Business Aircraft Association, Inc.
Sections of the FAR Affected: 14 CFR 135.299
Description of Relief Sought/Disposition: To permit pilots in command (PIC), employed by National Business Aircraft Association, Inc., members, to complete PIC route and airport checks in flight simulator rather than in an aircraft.

Denial, April 4, 1995, Exemption No. 6054

Docket No.: 27909
Petitioner: Professional Airline Training, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(2) and (3) and (b)(2); 121.413(b) and (c); and appendix H of part 121
Description of Relief Sought/Disposition: To permit Professional Airline Training, Inc. (PAT), without holding an air carrier operating certificate, to train the certificate holder's pilots in initial, upgrade, and recurrent training. The training would be conducted in approved simulators without PAT's instructor pilots meeting all applicable training requirements of subpart N and the employment requirements of appendix H of part 121.

Grant, April 4, 1995, Exemption No. 6050

Docket No.: 27945
Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR 121.133(c)
Description of Relief Sought/Disposition: To allow United Airlines to utilize electronic digital imaging and storage technology to prepare certain maintenance manual information and instructions for aircraft operated by United Airlines, in lieu of printed page form or microfilm.

Grant, March 24, 1995, Exemption No. 6042

Docket No.: 27990
Petitioner: Eastern Air Charter, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b)(5), (6), and (7)
Description of Relief Sought/Disposition: To permit Eastern Air Charter, Inc., to operate its Cessna Citation CE–550 in extended overwater operations with only one operative long-range navigational system (LRNS) and one operative high frequency communication system (HF).

Grant, March 31, 1995, Exemption No. 6053

Docket No.: 28039
Petitioner: Grand Air Express, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(2) and 135.165(a)(1) and (6) and (b)(6) and (7)
Description of Relief Sought/Disposition: To permit Grand Air Express, Inc., to operate its turbojet airplanes equipped with on high frequency communication system (HF) and one long-range navigation system (LRNS).

Grant, March 31, 1995, Exemption No. 6051

Docket No.: 28044
Petitioner: CIN–Air, L.P.
Sections of the FAR Affected: 14 CFR 91.511(a) and 135.165(b)(5), (6), and (7)
Description of Relief Sought/Disposition: To permit CIN to operate its Cessna Citation 500/550/560 aircraft in extended overwater operations with only one operative long-range navigational system (LRNS) and one operative high-frequency communication system (HF).

Grant, April 6, 1995, Exemption No. 6055

Docket No.: 28049
Petitioner: Merlin Express
Sections of the FAR Affected: 14 CFR 135.165(b)(6) and (7)
Description of Relief Sought/Disposition: To permit Merlin Express to operate turbojet aircraft equipped with one high frequency communication system (HF) in extended overwater operations.

Grant, March 31,1995, Exemption No. 6052

Docket No.: 28117
Petitioner: Executive Airlines
Sections of the FAR Affected: 14 CFR 135.165(b)(6) and (7)
Description of Relief Sought/Disposition: To permit Executive Airlines to operate turbojet aircraft equipped with one high-frequency (HF) communication system in extended overwater operations.

Grant, April 4, 1995, Exemption No. 6049

[FR Doc. 95–10387 Filed 4–26–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Ford Airport, Iron Mountain, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Ford Airport, Iron Mountain, Michigan, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. William H. Marchetti, Airport Manager, of the Dickinson County Board of Commissioners at the following address: County Courthouse 701 Stevenson Ave., P.O. Box 609, Iron Mountain, Michigan 49801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dickinson County Board of Commissioners under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7281. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 7, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dickinson County Board of Commissioners was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 25, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1995
Proposed charge expiration date: May 31, 2001
Total estimated PFC revenue: $215,820.00
Brief description of proposed projects:
Projects to Impose and Use:
Rehabilitate Taxiways ''C'', ''D'', and ''E'', Extend Runway 31 safety area; Acquire Airport Rescue and Fire Fighting (ARFF) vehicle.
Impose Only Projects: Install sanitary sewer; Rehabilitate Runway 1/19 including lighting and signage; Install PAPIs and REILs (Runway 19); Construct and light Taxiway ''H'', general aviation apron, and general aviation access road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not applicable.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dickinson County Board of Commissioners, Michigan.

Issued in Des Plaines, Illinois, on April 19, 1995.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–10391 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Spencer Municipal Airport, Spencer, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Spencer Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dan Payne, City Manager, Spencer, Iowa, at the following address: City Hall, 418 2nd Ave. W., Spencer, Iowa 51301.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Spencer Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4728. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Spencer Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 12, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Spencer Municipal Airport, Spencer, Iowa, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 20, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1995
Proposed charge expiration date: June 1, 2005
Total estimated PFC revenue: $240,000
Brief description of proposed project(s):
Expand auto parking and install PAPI's and REIL's; Overlay Taxiways A & B; install airport guidance signs; and expand and renovate terminal building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Spencer Municipal Airport.

Issued in Kansas City, Missouri on April 21, 1995.

James W. Brunskill,

Acting Manager, Airports Division, Central Region.

[FR Doc. 95–10389 Filed 4–26–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Toluenediamine); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 CB 717, of a petition requesting that toluenediamine be added to the list of

taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by June 26, 1995. Any modification of the list of taxable substances based upon this petition would be effective October 1, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on October 12, 1994. The petitioner is Air Products and Chemicals, Inc., a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2921.51.10

CAS number: 95–80–7, 823–40–5, 2687–25–4, and 496–72–0

This substance is derived from the taxable chemicals toluene, methane, and ammonia. Toluenediamine is a solid produced predominantly by a two-step process. The first step is mixed-acid nitration of toluene to produce dinitrotoluene. The second step is the catalytic reaction of hydrogen and dinitrotoluene to produce toluenediamine.

The stoichiometric material consumption formula for this substance is:

C_7H_8 (toluene) + 1.5 CH_4 (methane) + 2 NH_3 (ammonia) + 4 O_2 (oxygen) ——> $CH_3C_6H_3(NH_2)_2$ (toluenediamine) + 5 H_2O (water) + 1.5 CO_2 (carbon dioxide)

According to the petition, taxable chemicals constitute 53.95 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.59 per ton. This is based upon a conversion factor for toluene of 0.78, a conversion factor for methane of 0.26, and a conversion factor for ammonia of 0.34.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–10411 Filed 4–26–95; 8:45 am]

BILLING CODE 4830–01–U

Public Information Collection Requirements Submitted to OMB for Review

April 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0687
Form Number: IRS Form 990–T
Type of Review: Revision
Title: Exempt Organization Business Income Tax Return
Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.
Respondents: Not-for-profit institutions
Estimated Number of Respondents/Recordkeepers: 37,103
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—65 hr., 19 min.
Learning about the law or the form—22 hr., 2 min.
Preparing the form—37 hr., 7 min.
Copying, assembling, and sending the form to the IRS—3 hr., 45 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 4,756,234 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–10348 Filed 4–26–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

April 21, 1995.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0183
Form Number: IRS Form 4789
Type of Review: Resubmission
Title: Currency Transaction Report
Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than $10,000. The information is used to check tax compliance.
Respondents: Business or other for-profit
Estimated Number of Respondents: 788,871
Estimated Burden Hours Per Respondent: 19 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,762,705 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–10349 Filed 4–26–95; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Designs in Miniature: The Story of Mosaic Glass.'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Corning Museum of Glass, Corning, New York from on or about June 3, 1995 through October 22, 1995 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 22, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–10409 Filed 4–26–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

International Trade in Commercial Space Launch Services; Guidelines for Implementation of the Memorandum of Agreement With the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of guidelines for U.S. implementation of the renewed Memorandum of Agreement Between the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services (the Agreement).

SUMMARY: On March 13, 1995, the United States and the People's Republic of China (PRC) Signed a Memorandum of Agreement regarding international trade in commercial launch services for the period from January 1, 1995 to December 31, 2001. The Agreement renews the first U.S.–PRC Memorandum of Agreement which was signed on January 26, 1989 and expired on December 31, 1994. In order to assist in the successful operation of the Agreement, the U.S. Government has established certain guidelines it intends to follow in implementing the Agreement. This notice sets out these guidelines.

DATES: The Agreement is effective as of January 1, 1995. These guidelines on implementation are effective on April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Donald W. Eiss, Deputy Assistant U.S. Trade Representative for Industry, (202) 395–5656; Michael A. Spangler, Director of Commercial Space Policy, (202) 395–9602; or Vanessa P. Sciarra, Assistant General Counsel, (202) 395–7305; of the Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The current Memorandum of Agreement between the U.S. and the PRC regarding international trade in commercial launch services governs relevant trade in this type of service for the period January 1, 1995 to December 31, 2001. The Agreement renews the first U.S.–PRC Memorandum of Agreement which was signed on January 26, 1989 and expired on December 31, 1994. In order to assist in the successful operation of the Agreement, the U.S. Government has established certain guidelines it intends to follow in implementing the Agreement.

Copies of the Agreement are available for public inspection in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. An appointment to review the Agreement may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

I. Designation of Responsibility

Subject to the direction of the Trade Policy Staff Committee (TPSC), the TPSC Subcommittee on Commercial Launch Services (the Subcommittee) will be responsible for overall implementation of the Agreement.

II. Subcommittee Organization

For purposes of carrying out its responsibilities with respect to overall implementation of the Agreement, the Subcommittee will be chaired by USTR and will be composed of TPSC member agencies as may be invited by the Chairman to participate. A Working Group on Information (the Working Group) has been established to assemble such information as may be necessary to enable the Subcommittee to carry out its responsibilities. The Working Group is chaired by the Department of Transportation and includes the Department of Commerce, the Department of State, and such other departments or agencies as are designated by the Chairman of the Subcommittee.

III. Subcommittee Functions and Procedures

1. Data Collection and Monitoring of the Agreement

Subcommittee Functions. The Subcommittee performs two key functions with respect to the Agreement: (1) Ongoing assessment of the operation of the agreement relative to U.S. goals and objectives for the Agreement; and (2) monitoring PRC compliance with its specific obligations under the Agreement.

With respect to the first function, those goals and objectives include, *inter alia:* (i) Continuing the integration of PRC launch services providers into the international market on a non-disruptive basis; (ii) providing a stable international environment within which U.S. space launch companies can compete on a fair basis as PRC launch service providers continue their transition to absorbing the disciplines of the marketplace (costs, prices, profits) fully; (iii) ensuring that administration of the Agreement responds to changing conditions so as to support the continued success in the international commercial marketplace of all segments of the U.S. space industry, i.e., space launch companies, satellite manufacturers, and systems operators; and (iv) avoiding shortages of space launch capability that would prevent the development of new uses of space.

As the market evaluates an ever-growing number of new and untested proposals for the uses of commercial space, the U.S. Government fully intends to permit the market, not this Agreement, to determine which of these proposals are commercially successful. It is not the U.S. Government's intention that the Agreement's disciplines should favor the development of systems in one orbit as opposed to another (e.g., geostationary earth orbit (GEO) or low-earth orbit (LEO). The Subcommittee will monitor the Agreement carefully so as to ensure that the Agreement does not create an artificial advantage for business proposals simply by virtue of

the orbit of the satellites that will provide the service.

In addition, some commercial proposals are distinguishable by the number of satellites that would be required to deliver the proposed range and coverage of services. It is possible that some projects under consideration could fundamentally change the dynamics of demand and supply in the international space launch market. The Subcommittee will closely monitor such developments with respect to the Agreement and, in particular, their implications for the quantitative limitations of the Agreement.

With respect to the Subcommittee's second function, particular attention will be given to assessing information relevant to PRC obligations under the Agreement concerning the number of launches committed and carried out by the PRC to GEO; PRC participation in the market for launches to LEO, including in the deployment of individual communications satellite constellations; prices, terms and conditions of all PRC launches; and use of government supports, inducements, or unfair business practices.

Working Group Functions. The Working Group will develop information and analyses necessary for the Subcommittee to discharge its responsibilities in each of the two functions. In order to facilitate the Subcommittee's overall monitoring of the Agreement, the Working Group will produce information and analyses of conditions in the international commercial launch services market, general pricing trends, market performance and forecasts (aggregate, by orbit), launch commitments, launch services supply and demand relationships, and progress in the process of economic transition by PRC launch services providers. In particular, the Working Group will generate information on the number of commercial launches (including launch failures) covered by the Agreement for 1995, 1996, 1997 and 1998. This information will enable the Subcommittee to determine whether the number of average annual launches is twenty or more in either the first three or four years of the Agreement as provided for in Article IV(4) of the Agreement. The Agreement provides for certain automatic increases in the quantitative limit on launches to GEO if those circumstances are found to exist.

This information will be provided to the Subcommittee as needed, but in any event, the relevant information will be provided not later than 30 days prior to the semiannual reviews of the development of the market for commercial space launch services to GEO and 90 days prior to annual consultations.

In order to ensure PRC compliance with the provisions of the Agreement, the Working Group will collect information and conduct necessary comparisons with respect to individual launch competitions in which a PRC launch services provider is a participant, and when a concern arises regarding compliance by the PRC launch services provider with the provisions of the Agreement. These comparisons and related analyses will be provided to the Subcommittee as required in individual circumstances and 90 days prior to annual consultations.

Information Exchange. In addition, the Subcommittee will review and determine which information will be provided to the PRC in compliance with U.S. obligations under the Agreement. In making that determination, particular attention will be given to U.S. obligations under the Agreement with respect to the provision of publicly releasable information to the PRC on prices, terms and conditions prevailing in the international market for commercial launch services, including insurance arrangements relating to such services; U.S. views regarding prevailing international market conditions and likely future developments; U.S. and other government supports or inducements; and the number of commitments U.S. launch service providers have undertaken for international customers.

2. Consultations

In preparing for the consultations discussed below, the Subcommittee and the Working Group, as appropriate, will seek input from the U.S. space industry, including the U.S. satellite industry. Information will be sought sufficiently in advance to permit timely input from the U.S. private sector. The soliciting of additional input will be sought as needed in the course of such reviews.

Annual Consultations. The Subcommittee will meet at least 75 days in advance of the annual consultations required by Article IV(1) of the Agreement to begin preparations for such consultations. The Subcommittee will seek to hold annual consultations beginning in April 1996 and during each subsequent April over the life of the Agreement and to exchange information with the PRC at least thirty days in advance of such consultations.

The annual consultations provide the opportunity for the two parties to review the operation of the Agreement relative to its goals and objectives as well as the performance of each party in implementing the specific obligations of the Agreement over the preceding year (in particular, the PRC's adherence to its commitments regarding its participation in the market for launches to GEO and LEO). In addition, the annual consultations will provide opportunities for the United States to assess overall market trends as well as to identify the emergence of a commercially viable project that fundamentally changes demand in the overall launch services market. Prior to engaging in annual consultations on such a development, the Subcommittee will consider the implications of such a development for the disciplines contained in this Agreement, taking into account the results of input from the U.S. private sector on the matter.

One of the important new elements in the Agreement is Annex II, which enumerates a list of comparability factors that will be used in evaluating PRC compliance with its ''par pricing'' obligations on its launches to GEO. The Annex contains a brief description of each factor and an average range of values representing the impact that the factor could have on the ultimate price to the customer when applied in a procurement. During the annual consultations, these average values will be reviewed and updated to ensure that they remain relevant to actual conditions in the market.

Semiannual Consultations. The Agreement provides for a semiannual review of the limitations on the total number of satellites that may be launched to GEO by PRC providers of commercial launch services for international customers and, if appropriate, adjustment to such limitations.

In preparation for U.S. participation in that review, the Subcommittee will assess whether: (i) International demand for GEO launches is significantly greater than the estimated average of 12–15 commercial launches per year upon which the GEO quantitative restriction is based over the life of the Agreement and (ii) the development of a commercially viable project for satellite services has fundamentally changed demand for launch services. The Working Group will develop information on launch pricing, demand/supply projections and launch availability and commitments, which it will provide to the Subcommittee to permit these assessments. The Subcommittee will seek to hold this review as provided for in Article IV(3) of the Agreement during April and October of each year and to exchange information with the PRC at least thirty

days after the Subcommittee's assessment has been completed.

Special Consultations. The United States and the PRC have also undertaken to consult within thirty (30) days of a request by either party regarding any matter of particular concern relating to the operation of the Agreement. The Agreement contemplates three particular circumstances that would be the basis for such special consultations.

First, the United States may believe that the PRC has not upheld its commitment to price ''on a par'' with Western launch service providers in either the GEO or LEO markets. With respect to pricing in competitions for launches to GEO, a request for special consultations could be made in those instances in which the differential between the PRC price and Western price is greater than 15 percent and after preliminary analysis takes into account the pricing comparability factors set out in Annex II of the agreement (see discussion of ''Price Compliance'' below.)

Second, the United States may believe that there is an absence of launch availability from a Western supplier for a satellite to GEO. The purpose for this provision is to avoid a situation in which the Agreement would deny to a satellite manufacturer/user the alternative of a PRC launch vehicle and service for a launch to GEO even though no Western alternative exists. Without the flexibility to respond to this situation in a timely manner, the balance in the Agreement for all segments of U.S. industry involved in space could be disrupted.

The third circumstance explicitly provided for in the Agreement involves PRC participation in providing services for launches to LEO. In the Agreement, the PRC has committed that its participation in the LEO market will be consistent with the overall provisions of the Agreement (*inter alia,* with respect to pricing, government inducements, subsidies and nondiscrimination) and with significant U.S. participation in the development of the LEO market, and the PRC has agreed to take steps to ensure that such participation will be proportionate and non-disruptive. The U.S. may request special consultations if it believes that the PRC is participating, or may participate, in the LEO market in a manner inconsistent with these commitments.

Comprehensive Review. The Subcommittee will meet at least six months in advance of the comprehensive review required by Article VII of the Agreement to begin preparations for the review. Among its key tasks, the Subcommittee will carefully monitor the implementation of the Agreement to ensure that it contributes to, rather than detracts from, the balanced development of the GEO and LEO market segments and other segments of the market. In this regard, the Subcommittee will consider adjustments to the quantitative and bunching restrictions in Articles II(B)(ii) and II(B)(vi) to avoid distortive effects on various market segments in light of the development of a commercially viable project for satellite services that fundamentally changes demand for launch services or the emergence of higher than anticipated demand for GEO launches as provided for in Article IV(3)(a). The U.S. Government will seek to conclude the comprehensive review with the PRC in October 1998 to coincide with the semi-annual review to be held at that time.

3. Lack of Western Launch Availability

Article IV(2) of the Agreement provides that the United States may increase the quantitative limitation established under Article II(b)(ii) or relax the bunching provision set out in Article II(b)(vi): (i) If the United States is satisfied that there is an absence of Western launch availability due to full manifests or launch failures during the required launch period (generally within three months before and after the preferred launch date), and (ii) if the PRC has reached the limitation set out in Article II(b)(ii), or if the bunching provisions established in Article II(b)(vi) would apply to prevent the launch of a satellite.

In administering Article IV(2), the Subcommittee will follow the procedures described in Sections A and B below.

(A) In support of a request that the United States increase the quantitative limitation established under Article II(b)(ii) or relax the bunching provision set out in Article II(b)(vi) due to the lack of Western launch availability, a U.S. satellite manufacturer or U.S. international customer (either of which constitutes a ''certifying entity'') shall provide a properly executed written certification to USTR. The written certification must contain the following elements:

(1) A statement by the certifying entity that, in the course of negotiating with a prospective international customer for the sale of a commercial satellite or with a launch provider for the launch of a satellite, the certifying entity or an international customer of the certifying entity has contacted all launch service providers with a technically compatible vehicle, including all such domestic launch service providers;

(2) A statement that the certifying entity or an international customer of the certifying entity has contacted a launch vehicle provider in the PRC regarding the availability of launch services by a PRC provider and that space for the proposed satellite is available on the PRC launch service provider's launch manifest;

(3) A statement that the PRC launch service provider is the only launch service provider that is available during the required launch period as defined in Article IV(2); and

(4) A statement that the certifying official is an official of the certifying entity and is familiar with and responsible for the negotiations regarding the proposed launch based upon information and belief.

The above certification must be signed and dated by the certifying official of the certifying entity. It must be accompanied by supporting documents, including copies of the written requests made to each launch service provider and a copy of the written response, if any was received, from each provider regarding its unavailability to provide the launch in the required launch period as defined in Article IV(2). If no written response from a particular provider was received, the certification should indicate the nature of the response.

USTR will exempt from public disclosure confidential business information contained in any supporting documents in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and any other applicable law. Confidential business information submitted to USTR must be clearly marked ''Business Confidential'' at the top of each cover page or letter and each succeeding page containing such information.

Upon receipt of a certification, USTR will review the certification to ensure that it was executed properly and will review the supporting documents to ensure that they provide satisfactory evidence of the facts alleged in the certification.

(B) Within ten working days of the date of receipt of the certification and supporting documents, USTR will indicate to the certifying entity whether additional information will be required to satisfy USTR that the facts as described in the certification are correct. As soon as such information has been received which provides such assurance, USTR will, within an additional ten working days, determine that one of the conditions listed in Article IV(5) of the Agreement has been

met and will notify the PRC that the United States is exercising its unilateral authority under Article IV(5) of the Agreement to raise the quota set out in Article II(b)(ii) or relax the bunching provision described in Article II(b)(vi) in order to permit the launch by a PRC launch service provider.

If, at the end of the ten-day period described above, USTR had not indicated to the certifying entity that additional information is required to satisfy USTR that the facts as described in the certification are correct, then USTR will, within an additional ten working days, determine that one of the conditions listed in Article IV(5) of the Agreement has been met and will notify the PRC that the United States is exercising its unilateral authority under Article IV(5) of the Agreement to raise the quota set out in Article II(b)(ii) or relax the bunching provision described in Article II(b)(vi) in order to permit the launch by a PRC launch service provider.

4. Price Compliance

The Agreement allows the PRC to offer launch services at prices ''on a par with those prices, terms and conditions prevailing in the international market for comparable commercial launch services'' as stipulated in Article II(B)(iv).

The Agreement further describes the following mechanism that will be utilized in applying the ''par-pricing'' requirement for launches to GEO. Article II(B)(iv)(a) states that an unadjusted PRC price falling within 15 percent of the lowest Western price will be assumed to be in compliance with the Agreement. That assumption will only be reviewed if clear evidence to the contrary is presented to the Subcommittee. In those instances in which the price differential is greater than 15 percent, PRC compliance with the ''par pricing'' obligation will be evaluated in light of the comparability factors and values contained in Annex II of the Agreement. The U.S. intends to make a preliminary evaluation prior to any decision to request special consultations.

Its is important to note that the 15 percent price differential is only applicable to the difference between Western and PRC offer prices. If a PRC offer price is more than 15 percent less than the lowest Western price, the relevant comparability adjustments described in Annex II will be made to the unadjusted PRC or Western offer prices, as appropriate. Comparison will then be made of the PRC and Western prices adjusted only for the relevant comparability factors, and not for the 15 percent price differential as well.

5. Low Earth Orbit (LEO) Provisions

In light of the emergence of the remote-sensing and weather-tracking market for launches to LEO since 1989 and commercial plans for the deployment of telecommunications satellite constellations into LEO beginning in 1997, the Agreement contains specific disciplines and guidelines regarding Chinese launches to LEO in Article II(B)(iii).

Pursuant to that Article, legitimate behavior in the international market for commercial launch services is governed by the following norms of behavior previously developed for the GEO market: (i) Market principles including avoidance of below-cost pricing, government inducements and unfair business practices; (ii) the use of government supports in a manner consistent with practices prevailing in the international market; (iii) the need to ''price on a par'' with the prices offered by commercial launch service providers from market economy countries including the United States; (iv) the need to act in a manner consistent with prevailing practices in international markets with respect to insurance or reflight guarantees; and (v) avoidance of unfair discrimination against any international customer or supplier. PRC participation will be consistent with significant U.S. participation in the development of the LEO market and such participation by the PRC will be proportionate and non-disruptive.

In evaluating Chinese compliance with the above provisions as they pertain to LEO communications satellite constellations, the U.S. will be guided first with respect to the initial deployment of such constellations by the level of participation of providers from countries with whom the U.S. has bilateral space launch agreements. Accordingly, the Subcommittee will review proposals for the initial deployment of a LEO communications satellite constellation in order to determine if, in such proposals, the overall level of participation by launch service providers in countries with whom the U.S. has concluded a bilateral launch services agreement is more than 50 percent of the participation of market economy launch service providers (as measured according to the distribution of payloads).

In deciding whether a situation in which more than 50 percent of the initial deployment has been granted to countries with whom the U.S. has concluded bilateral space launch agreements raises concerns regarding PRC compliance with its LEO commitments, the Subcommittee may take into account certain other factors including: (i) The extent of PRC and U.S. participation in the deployment; (ii) launch scheduling requirements and the need to optimize launch vehicle selection to meet deployment or operational requirements; (iii) the availability of competitively-priced market economy launches to meet these requirements; (iv) opportunities made available to the parties for participation in the replacement market; (v) reasonable considerations by the proposed system operator regarding commercial risk sharing (''commercial risk sharing'' is defined to include equity participation arrangements); and (vi) customers' requirements.

The U.S. Government understands that the scope and complexity of these LEO satellite communications constellations makes these potential ventures particularly sensitive to delays. Consistent with the commitment to ensure a balance among all segments of the U.S. private sector participating in space, the Subcommittee intends to conduct reviews of LEO satellite communications constellations expeditiously so as to avoid unnecessary uncertainty in the market place.

6. Discussions With Other International Parties

At least annually, the Subcommittee will consider whether discussions with other international parties could be beneficial. If the Subcommittee determines that discussions could be beneficial, it will recommend to the TPSC and to the U.S. Trade Representative that such discussions be initiated.

IV. Consultations With Domestic Interests

The Subcommittee and the Working Group will, in carrying out the functions and procedures set forth in Section III above, consult with and seek the advice of representatives of U.S. commercial launch service providers, launch vehicle manufacturers and satellite manufacturers and operators, and, as appropriate, interested Congressional committees, the user community, and other interested parties, including the relevant private sector advisory committees. Such contacts will be made in conjunction with the information and assessments referred to in Section III(1) above and U.S. preparation for, and follow-up on, the results of consultations with the PRC held under the Agreement. The Subcommittee will

also, as appropriate, inform such interests of significant requests or notifications made by the PRC under the Agreement, or significant developments under the Agreement.

V. Information Sharing

In the course of consulting with domestic interests, in particular prior to annual consultations under the Agreement, the Subcommittee may provide such information provided by the PRC as is allowed by the Agreement subject to business confidentiality.

VI. Treatment of Business Confidential Information

The Department of Transportation (DOT), as Chair of the Working Group, will have primary responsibility for soliciting and receiving, and will maintain information to be collected and reviewed by the Working Group for purposes of this Agreement.

Members of the U.S. industry, and other interested members of the public, are invited to submit written comments on issues related to the Agreement and its operation. Comments must be provided in twenty copies to the DOT Office of Commercial Space Transportation, Attention: Working Group on Information for PRC Space Launch Services, 400 7th Street, SW., Room 5408, Washington, DC 20590–0001.

Submissions from the public will be placed in a file open to public inspection at the above address pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of the cover page or letter and each succeeding page, and must be accompanied by a nonconfidential summary of the confidential information.

VII. Enforcement

If, as a result of information obtained in any consultation or the comprehensive review required under Article VII of the Agreement or, on the basis of information presented to it by the Working Group, the Subcommittee is of the view that the PRC is not in compliance with the terms of the Agreement, the Subcommittee will notify the TPSC and recommend consultations with the PRC if appropriate. If consultations proceed and satisfactory resolution is not achieved with the PRC or, if consultations are deemed to be inappropriate in the circumstances based on recommendations of the TPSC, the section 301 Committee may consider whether the USTR should initiate an investigation pursuant to the authority set forth in Section 301 of the Trade Act of 1974, as amended.

The USTR will, from time to time, advise the Secretary of State and the Secretary of Commerce of the status of the implementation of the Agreement in order that this information may be available to the Secretaries with respect to the State Department export license responsibilities under the Arms Export Control Act and its implementing regulations, the International Traffic in Arms Regulations (see 22 CFR parts 120–130), and the Commerce Department export license responsibilities under the Export Administration Act.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–10334 Filed 4–26–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 81
Thursday, April 27, 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).

ASSASSINATION RECORD REVIEW BOARD

TIME AND DATE: 1:00 p.m., May 3, 1995.

PLACE: 600 E Street, NW, Room 206, Washington, D.C. 20530.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Update by a representative of the National Archives and Records Administration (NARA) on the President John F. Kennedy Assassination Records Collection at NARA.
2. Discussion of and vote upon final interpretive regulations, based on proposed interpretive regulations published for notice and comment on February 8, 1995 (60 FR 7506–7508).

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, D.C. 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 95–10495 Filed 4–25–95; 2:03 pm]

BILLING CODE 6820–01–TD

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:47 a.m. on Monday, April 24, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the probable failure of an insured depository institution.

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington DC.

Dated: April 24, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–10476 Filed 4–25–95; 11:42 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, April 26, 1995.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Joy Technologies,* Docket No. WEST 93–129. (Continuation of discussion of issues that include whether a vendor of mining equipment may be cited as an independent contractor-operator based on the actions of its service representative.)

No earlier announcement of the meeting was possible. Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: April 21, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–10456 Filed 4–25–95; 11:41 am]

BILLING CODE 6735–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors has scheduled a meeting by telephone on Friday, April 28, 1995. The meeting will commence at 11 a.m. Members of the public wishing to participate may do so via telecommunications equipment at the location noted below.

PLACE: Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002, (202) 366–8800.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed should a majority of the Board of Directors vote at the meeting to hold an executive session. In accordance with the aforementioned vote, at the closed session, the Board may discuss specific items that were the subject of a closed session of a meeting of the Board and/or its committees held during November 1993 through February 1995. In executive session, the Board also may discuss with counsel pending litigation. The closing is authorized by section 552b(c)(10) of the Government in the Sunshine Act and 45 C.F.R. Section 1622.5(h) of the corresponding regulation of the Legal Services Corporation and those portions of the Act (5 U.S.C. Section 552b) and the corresponding regulation (45 C.F.R. Part 1622) cited in the notices of the November 1993 through February 1995 meetings at which the items were discussed. The closing has been certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will be otherwise available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Vote as to Whether Corporation Business Requires Meeting on Fewer than Seven Days Notice.
3. Consider and Act on Corporation's Policy Regarding Release of Transcripts of those Portions of Meetings of the Board and/or its Committees held in Executive Session.
4. Consider and Act on the Request of April 24, 1995, for Specific Executive Session Transcripts.
5. Consider and Act on Other Business.
6. Vote as to Whether Board Should Close a Portion of the Meeting.

Closed Session

7. Discussion of Specific Items Held in Executive Sessions of the Board and/or its Committees during November 1993 through February 1995.

8. Discussion with Counsel of the Recent Decision in *Wilkinson v. LSC*, and Determination as to how to Proceed in the Litigation.

CONTACT PERSON FOR INFORMATION:

Victor M. Fortuno, (202) 336–8810.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Melody Haley, at (202) 336–8810.

Date issued: April 25, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–10572 Filed 4–25–95; 3:58 pm]

BILLING CODE 7050–01–M

federal register

Thursday
April 27, 1995

Part II

Environmental Protection Agency

40 CFR Parts 55 and 71

Federal Operating Permits Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 55 and 71

[FRL 5183–1]

RIN 2060–AD68

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: The EPA is proposing a new subpart containing regulations setting forth the procedures and terms under which the Administrator will administer programs for issuing operating permits to covered stationary sources, pursuant to title V of the Clean Air Act as amended in 1990 (the Act). Although the primary responsibility for issuing operating permits to such sources rests with State, local, and Tribal air agencies, EPA will remedy gaps in air quality protection by administering a Federal operating permits program in areas lacking an EPA-approved or adequately administered operating permits program. Federally issued permits will clarify which requirements apply to sources and will enhance understanding of and compliance with air quality regulations.

DATES: *Comments.* Comments on the proposed regulations must be received by EPA's Air Docket on or before June 26, 1995.

Public Hearing. A public hearing is scheduled for 10:00 a.m., on May 30, 1995, at the address listed below. Requests to present oral testimony must be received by May 12, 1995, and the hearing may be canceled if no speakers have requested time to present their comments by that date. Written comments in lieu of, or in addition to, testimony are encouraged.

ADDRESSES: Comments should be mailed (in duplicate if possible) to: EPA Air Docket (Mail Code 6102), Attn: Docket No. A–93–51, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. The public hearing will be held in the Waterside Mall auditorium at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket. Supporting information used in developing the proposed rules is contained in Docket No. A–93–51. Supporting information used in developing 40 CFR part 70 is contained in Dockets No. A–90–33 and No. A–93–50. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919/541–3189) or Kirt Cox (telephone 919/541–5399), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Susan Curtis in writing at the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Comments

The EPA is unlikely to be able to extend the public comment period. Two paper copies of each set of comments are requested. If possible, comments should be sent in both paper and computerized form. Comments generated on computer should be sent on an IBM-compatible diskette and clearly labeled. Computer files created with the WordPerfect 5.1 software package should be sent as is. Files created on other software packages should be saved in an ''unformatted'' mode for easy retrieval into WordPerfect. Comments should refer to specific page numbers of today's proposal whenever possible.

Outline

The contents of today's preamble are listed in the following outline:

I. Background and Purpose
II. Proposal Summary
III. Detailed Discussion of Key Aspects of the Proposed Regulations
A. Section 71.2—Definitions
B. Section 71.3—Sources Subject to Permitting Requirements
C. Section 71.4—Program Implementation
D. Section 71.5—Permit Applications
E. Section 71.6—Permit Content
F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions
G. Section 71.8—Affected State Review
H. Section 71.9—Permit Fees
I. Section 71.10—Delegation of Part 71 Program
J. Section 71.11—Administrative Record, Public Participation, and Administrative Review
K. Section 71.12—Prohibited Acts
IV. Administrative Requirements
A. Reference Documents
B. Office of Management and Budget (OMB) Review
C. Regulatory Flexibility Act Compliance
D. Paperwork Reduction Act

I. Background and Purpose

Title V of the Act as amended in 1990 (42 U.S.C. 7661 *et seq.*) imposes on States the duty to develop, administer, and enforce operating permits programs that comply with the requirements of title V (section 502(d)(1)). The EPA has 1 year to approve or disapprove a submitted program (section 502(d)(1)). Once EPA has approved a State program, the covered sources within that program's scope have 1 year to submit permit applications to the permitting authority (section 503(c)) unless the permitting authority establishes an earlier date. Within the first 3 years of the program, the permitting authority must act on all applications submitted in the first year of the program (section 503(c)), and EPA must have an opportunity to object to the proposed permit if it does not comply with the Act's requirements (section 505(b)). Once the permitting authority issues a source its permit, the source may not violate any requirement of its permit or operate except in compliance with it (section 502(a)).

Title V also requires that EPA stand ready to issue Federal operating permits when States default in their duty to develop and administer part 70 programs. Section 502(b) of the Act requires that EPA promulgate regulations setting forth provisions under which States will develop operating permits programs and submit them to EPA for approval. Pursuant to this section, EPA promulgated 40 CFR part 70 on July 21, 1992 (57 FR 32250), which specifies the minimum elements of State operating permits programs.

The operating permits program's potential consequences for air pollution control and for sources' ability to meet changing market demands have made the process of developing and implementing the program complex and controversial. Indeed, nearly 20 entities, including State and local governments, environmental groups, and industry associations, petitioned for judicial review of the part 70 regulations. Subsequently, EPA decided to propose revisions to part 70. See 59 FR 44460 (Aug. 29, 1994). In light of ongoing discussions with petitioners, EPA may propose additional revisions to part 70 in the future that may also necessitate supplementing the part 71 provisions proposed today.

The EPA intends that proposed part 71 generally follow the approach taken in 40 CFR part 70, including the

recently proposed revisions to part 70. Differences between part 70 and part 71 are noted in the discussion of each section of the proposed rule. Where possible and appropriate, provisions of part 71 are consistent with part 70. Some of the differences between the provisions of part 71 and part 70 reflect the fact that part 71 programs are expected to be of limited duration. The EPA expects that States (and many Tribes) will revise their programs so that they become approvable, and responsibility for the permits program will be transferred back to the State or Tribe.

The Agency is aware that many parties have already submitted comments expressing both their concerns about and their support for the proposed revisions and that these parties are interested in the final Agency decisions on many of the issues raised in the part 70 rulemaking. This proposal for part 71 is not intended in any way to prejudge the Agency's decisions in the part 70 rulemaking, but rather simply parallels the proposed part 70 revisions in order to be consistent with that proposal.

The primary purpose of the proposed rule is to provide the mechanism by which EPA can assume responsibility to issue permits in situations where the State, local, or Tribal agency has not developed, administered, or enforced an acceptable permits program or has not issued permits that comply with the applicable requirements of the Act. Secondarily, the proposed rule provides for delegation of certain duties that may provide for a smoother program transition when State programs are approved. For both of these reasons, the proposed rule should strengthen implementation of the Act and enhance air quality planning and control.

Additional benefits of the proposed rule are much the same as those of the part 70 State operating permits rule. For example, permits issued under part 71 will clarify which requirements apply to a source. This clarification should enhance compliance with the requirements of the Act. The part 71 program will enable the sources, EPA, and the public to better understand the requirements to which the source is subject and whether the source is meeting those requirements. Part 71 permits also provide the vehicle for implementing air toxics programs under section 112.

The comment period for the proposed revisions to part 70 will end prior to the comment period for today's rulemaking proposal. It would therefore be of limited value for commenters to suggest in response to today's rulemaking proposal their concerns with those aspects of the part 70 proposed revisions on which proposed part 71 is based. Rather, EPA solicits comments on whether there are any provisions in proposed part 71 for which EPA has inappropriately proposed consistency with part 70 or its proposed revisions or has inappropriately departed from part 70 or its proposed revisions.

The rationale for today's proposal and many of the issues addressed in this proposal are discussed in greater detail in a document entitled ''Supplementary Information for Proposed Federal Operating Permits Rule'' (Supplementary Information Document) which is contained in the docket for this proposal (Docket No. A–93–51).

This preamble makes frequent use of the term ''State,'' usually meaning the State air pollution control agency that would be the permitting authority for a part 70 permit program. The reader should assume that use of ''State'' may also include reference to a local air pollution agency. In some cases, the term ''permitting authority'' is used and can refer to State, local, and Tribal agencies. The term may also apply to EPA, where the Agency is the permitting authority of record.

II. Proposal Summary

Sections 502(d)(3) and 502(i)(4) of the Act require EPA to promulgate a Federal operating permits program when a State has defaulted on its obligation to submit an approvable program within the timeframe set by title V or on its obligation to adequately administer and enforce an approved program. The rule proposed in this action would establish a national template for a Federal operating permits program that EPA may administer and enforce in a State. In addition, the proposed rule would establish the procedures for issuing Federal permits to sources for which States do not have jurisdiction (i.e., OCS sources outside of State jurisdictions and sources located in Tribal areas). Finally, the proposed rule would establish the procedures used when EPA must take action on a permit that has been proposed or issued by a State or local agency or Indian Tribe having an approved part 70 program and that EPA determines is not in compliance with the applicable requirements of the Act.

Like part 70, part 71 requires: (1) The use of a standard permit application form; (2) that sources subject to permitting requirements pay permit fees that assure adequate program resources and funding; and (3) permit issuance, appeal, and renewal procedures that ensure that each regulated source can obtain a permit that will assure compliance with all of its applicable requirements under the Act. Part 71 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP), Federal implementation plan (FIP), or Tribal implementation plan (TIP); the acid rain program; the air toxics program under section 112; and other applicable provisions of the Act. Sources must also submit periodic reports to EPA concerning the extent of their compliance with permit obligations.

When EPA implements a part 71 program, it will cover only the geographic area that is not covered by an approved State, local, or Tribal program. For example, if a local agency within a State has an approved program but the entire State is not covered by an approved program, EPA's implementation of a part 71 program for the State would not affect the area subject to the approved local program.

In appropriate circumstances, EPA may delegate to a State, local, or Tribal permitting authority some or all of its authority to administer a part 71 program. The responsibilities of EPA and the delegate agency will be set forth in a Delegation of Authority Agreement.

The EPA will generally cease implementation of a part 71 program subsequent to approval of a State operating permits program.

III. Detailed Discussion of Key Aspects of the Proposed Regulations

A. Section 71.2—Definitions

Generally, the proposed definitions in part 71 would follow the definitions in currently promulgated part 70 and its proposed revisions, as appropriate. However, some of the definitions used in 40 CFR part 70 would be modified for use in this part. The key part 71 definitions (including some which would be defined differently than in part 70) are discussed in this section. Others are discussed in the preamble sections describing the program areas where they are primarily used. Still others are defined in other titles of the Act and the regulations promulgated thereunder.

1. Affected State

The definition of ''affected State'' for purposes of proposed § 71.8 would include lands within the exterior boundaries of an Indian reservation or other areas over which an Indian Tribe has jurisdiction (hereafter ''Tribal area''). If EPA administers a part 71 program for such an area, EPA would consider the Indian Tribe to be an

affected State and would provide the Tribe notice of draft permits, permit renewals, permit reopenings, and permit revisions. Such notice would also be provided when a part 71 program is implemented outside of a Tribal area and an applicant source is within 50 miles of the Tribal area, or is in an area that is contiguous to the Tribal area and may affect the air quality in that area, provided the Indian Tribe meets the eligibility criteria for being treated in the same manner as a State for programs under the Act. See 59 FR 43956 (Aug. 25, 1994).

The definition of ''affected State'' for purposes of proposed § 71.8 would also include the State or Tribal area and the area within the jurisdiction of the air pollution control agency in which the part 71 permit, permit revision, or permit renewal is being proposed. EPA believes this provision is necessary for part 71, while not for part 70. In some cases under a part 71 program, the title V permitting authority (EPA) would not be the same as the governmental body with general jurisdiction over the area (i.e., the State, Tribe, or local air pollution control agency). When EPA is the permitting authority, EPA believes it is necessary to notify the States, Tribal authorities, and local agencies with jurisdiction over the areas in which EPA's action is proposed. Otherwise, these authorities would be less apprised of EPA's actions than the neighboring areas that do not have jurisdiction over these areas and are less likely to be impacted by EPA's actions. The EPA solicits comment on this expansion of the term ''affected State,'' and on whether other mechanisms might adequately serve to apprise ''host'' jurisdictions of EPA part 71 actions.

2. Applicable Requirements

An ''applicable requirement'' is any standard or other requirement that applies to a source. This includes any relevant requirement in an approved SIP or preconstruction permit. It also includes any pertinent standard or other requirement imposed pursuant to any title of the Act, such as sections 111, 112, 114(a)(3), 129, 183(e), 183(f), 328, 504(b), 504(e), 608, or 609. However, EPA does not believe that the provisions of sections 604 through 606 and 610 through 612 of title VI of the Act must be considered as applicable requirements for title V and included in title V permits. The rationale for this determination can be found in the preamble to the proposed revision of the part 70 regulations, at IV.A.1(b). See 59 FR 44460 (Aug. 29, 1994).

For purposes of part 71, EPA today incorporates that rationale by reference. The EPA also incorporates by reference that notice's rationale for adding to the list of applicable requirements any requirements that create offsets or limit emissions for the purpose of complying with, or avoiding applicable requirements. The proposed addition to the part 70 list and today's proposal for part 71 would add as an applicable requirement any emissions-limiting requirement that is enforceable by citizens or EPA under the Act and that is placed on a source for purposes of creating an offset credit or avoiding the applicability of applicable requirements.

3. Tribal Areas

The EPA has published a proposed rule, pursuant to section 301(d)(2), specifying the provisions of the Act for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States. See 59 FR 43956 (Aug. 25, 1994) (''Indian Tribes: Air Quality Planning and Management,'' hereafter ''proposed Tribal rule''). The proposed Tribal rule also addresses the criteria a Tribe must meet in order to be eligible for treatment in the same manner as a State for the specified provisions of the Act.

For a Tribe to be eligible for treatment in the same manner as a State, it must be Federally recognized (section 302(r)) and must meet the three criteria set forth in section 301(d)(2)(A)–(C). Briefly, these criteria consist of the following: (1) The Tribe must have a governing body carrying out substantial governmental duties and powers; (2) the functions to be exercised by the Tribe must pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction; and (3) the Tribe must be capable of carrying out the functions to be exercised consistent with the terms and purposes of the Act and applicable regulations. These criteria and EPA's streamlined process for determining compliance with these criteria are described in detail in the Tribal rule (59 FR 43961–43964).

In the Tribal rule, EPA proposes to interpret the Act as granting, to Tribes approved by EPA to administer programs under the Act in the same manner as States, authority over all air resources within the exterior boundaries of an Indian reservation. This would enable Tribal-approved programs under the Act to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation. The proposed Tribal rule would also authorize an eligible Tribe to develop and implement programs under the Act for off-reservation lands that are determined to be within a Tribe's inherent sovereign authority to regulate. The rationale for this proposed interpretation of Tribal jurisdiction under programs under the Act is set out in detail in the proposed Tribal rule, and is incorporated here by reference. See 59 FR 43958–43961.

EPA's final interpretation of Tribal jurisdiction under this Act may affect the scope of a part 71 program administered by EPA for Tribes. When, pursuant to Federal implementation authority, EPA is acting in the place of a State or Tribe under the Act, all of the rights and duties that would otherwise fall to the State or Tribe accrue instead to EPA. See *Central Arizona Water Conservation Dist.* v. *EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 94 (1993). Therefore, the scope of Tribal authority under the Act may inform EPA's authority in administering a part 71 program for Tribes.

More specifically, EPA would have authority to implement a Tribal part 71 program for any lands within the exterior boundaries of a reservation and any off-reservation land over which a Tribe has inherent sovereign authority. Tribes determined eligible to be treated in the same manner as a State under the Act would be given notice under proposed §§ 71.8 and 71.10 of certain permit actions. All land within the exterior boundaries of a reservation and any other lands over which a Tribe has demonstrated inherent authority would be considered in providing notice to a Tribe. Further, the proposed part 71 rules provide that, in all instances, the Tribe for the area in which a part 71 permit program is being administered will receive notice.

The EPA's proposed Tribal rule is subject to public comment and may be modified before it is issued in final form. The EPA may need to make conforming changes to the part 71 rules proposed today to reflect any relevant revisions made to the Tribal rule.

4. Major Source

The EPA is proposing to utilize the same approaches to defining ''major source'' as were used for 40 CFR parts 63 and 70, except that today's proposal, like the recently proposed revisions to part 70, would change the definition of major source to conform to the definition in section 112(a) of the Act and to implementing regulations governing hazardous air pollutants (HAP) sources recently promulgated in 40 CFR part 63. Section 501(2) of the Act provides, in relevant part, that the term ''major source'' means ''any stationary source (or any group of stationary sources located within a

contiguous area and under common control)'' that would be a major source under section 112 or a major stationary source under section 302 or part D of title I of the Act. Other conditions and requirements relevant to the major source definition are:

a. *Section 302 and Part D Sources.* Except for sources qualifying as support facilities (see paragraph (c) of this section), stationary sources can only be aggregated to determine whether they constitute a major stationary source subject to section 302 or part D of the Act if they are in the same industrial grouping, as determined by their 2-digit code. These codes can be found in the Standard Industrial Classification Manual, 1987.

b. *Section 112 Sources.* Stationary sources of HAP must be aggregated for the purpose of determining whether they are major sources subject to section 112 without regard to their industrial grouping.

c. *Support Facilities.* The EPA proposes to include in the definition of a major source pursuant to section 302 or part D of title I of the Act, any facility or emission unit used to support the main activity of the source, regardless of its 2-digit code. A support facility must be located on the same property as the source it supports, or on adjacent property, and be under the control of the same entity. Also, at least 50 percent of the support facility's output must be dedicated to the source.

d. *Emission Requirements.* To be major, a stationary source must have the potential to emit pollutants in amounts at or above the major source threshold, which is determined by the type of pollutant emitted and by the attainment status of the area in which the source is located. Thus, the term ''major source'' encompasses the following:

(1) Air toxics sources with the potential to emit 10 tons per year (tpy) or more of any HAP listed pursuant to section 112(b); 25 tpy or more of any combination of HAP listed pursuant to section 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies. And, once the Administrator promulgates a definition of major source for radionuclides, a source would be major if it emits, or has the potential to emit, major amounts of radionuclides.

(2) Sources of air pollutants, as defined in section 302 of the Act with the potential to emit 100 tpy or more of any pollutant.

(3) Except as noted in paragraph (d)(4) of this section, sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following, or greater, amounts:

(a) 50 tpy VOC or NO_X in serious ozone nonattainment areas;

(b) 25 tpy VOC or NO_X in severe ozone nonattainment areas;

(c) 10 tpy VOC or NO_X in extreme ozone nonattainment areas;

(d) 50 tpy VOC in ozone transport regions established pursuant to section 189 of the Act;

(e) 50 tpy carbon monoxide (CO) in serious CO nonattainment areas; and

(f) 70 tpy particulate matter (PM–10) in serious particulate matter nonattainment areas.

(4) The NO_X thresholds in paragraph (d)(3) of this section do not apply in nonattainment areas qualifying for an exemption under section 182(f) of the Act. This exemption applies in the case where reducing NO_X emissions would not reduce ozone formation. In those areas, a stationary source of NO_X is not considered a major source under part D of title I of the Act unless its potential to emit is 100 tpy or more. In areas not qualifying for this exemption, NO_X sources are subject to the lower thresholds defined in part D and listed in paragraph (d)(3) of this section. Whatever its location, any 100 tpy source would be considered a major source under section 302 of the Act. Also, the major source threshold for VOC in ozone transport regions in paragraph (d)(3) of this section does not apply for NO_X. This threshold was created by section 184(b) of the Act. Because section 182(f) of the Act (which requires NO_X sources to meet the same thresholds as VOC sources) does not refer to section 184(b) of the Act, the lower threshold for VOC sources in ozone transport regions does not apply to NO_X sources.

e. *Fugitive Emissions.* The fugitive emissions from a stationary source shall be considered in making the determination as to whether it is a major source when:

(1) The source belongs to one of the source categories listed in the definition of ''major stationary source'' at 40 CFR parts 51 and 52 which includes source categories regulated by a section 111 or section 112 standard as of August 7, 1980. Thus, proposed part 71 would follow the proposed revisions to part 70 in that sources in categories subject to standards set after August 7, 1980, if not otherwise listed, would be exempted from the requirement to include fugitive emissions when making their major source determination until such time as EPA conducts section 302(j) rulemaking to require that fugitive emissions from those sources be included.

(2) The air pollutants emitted are HAP or radionuclides. The EPA believes the Act requires that fugitive emissions of HAP or radionuclides, to the extent quantifiable, be counted. Section 112(a)(1) of the Act uses the term ''major source,'' rather than ''major stationary source,'' and legislative history indicates an intent by Congress to treat this definition differently than the section 302(j) ''major stationary source'' definition. Moreover, section 112 of the Act establishes a new program with a relatively narrow focus; it applies only for specific HAP at source categories to be determined by EPA. All this suggests that the section 302(j) rulemaking requirement does not apply in the context of section 112, and that fugitive emissions must therefore be included for the purpose of determining whether a source is major under section 112(a)(1).

4. New Source Review

The definitions for major and minor NSR have been included so they can be used to describe the proposed permit revision procedures. In some cases, the action to revise a permit will depend on whether the change was subjected to major or minor NSR before being processed as a part 71 revision.

5. Potential To Emit

In the proposed definition of ''potential to emit,'' limitations on a source's potential to emit would be federally enforceable only if they are enforceable by the Administrator and citizens under the Act. This differs from the definition currently in part 70 of this chapter, in that the part 70 definition only requires that the limitations be enforceable by the Administrator. This proposal would follow the definition in the proposed revisions to part 70. See 59 FR 44460 (Aug. 29, 1994).

6. Responsible Official

The proposed definition of ''responsible official'' would follow the definition in the recently proposed revisions to part 70.

7. Title I Modification

The proposed rule would adopt the definition of ''title I modification'' or ''modification under any provision of title I of the Act'' that is used in part 70. The proposed definition parallels a proposed revision to the regulations at part 70 of this chapter, on which EPA solicited comment, and the rationale for the definition in the preamble to the proposed revision to part 70 is incorporated herein by reference. See 59 CFR 44460 (Aug. 29, 1994).

B. Section 71.3—Sources Subject to Permitting Requirements

Section 502(a) of the Act subjects all affected sources (as provided in title IV), major sources, sources (including area sources) subject to standards or regulations under sections 111 or 112, sources required to have permits under parts C or D of title I, and any other source in a category designated by EPA, to the permitting requirements of title V. Section 502(a) also provides the Administrator the discretion to exempt one or more source categories (in whole or in part) from the requirement to obtain a permit ''if the Administrator finds that compliance with such requirements is impracticable, infeasible or unnecessarily burdensome on such categories.'' The Act specifies that major sources may not be exempted from these requirements. This requirement applies both to sources that are major for criteria pollutants and those that are major emitters of the HAP listed at section 112(b). However, section 112(r)(7)(F) of the Act also provides that sources that are subject solely to regulations or requirements under section 112(r) of the Act are not required to obtain a permit under this part.

1. Temporary Exemptions for Nonmajor Sources

Section 70.3(b)(1) of this chapter deferred the applicability of part 70 to nonmajor sources (except for affected sources and solid waste incineration sources) that would otherwise be subject because they are in a source category that is subject to part 70, such as one regulated by a section 111 or 112 standard. In the final part 70 rule, EPA stated its intent to propose rulemaking to resolve the exception status of these nonmajor sources within 5 years following the first full or partial approval of a State program with a deferral.

The EPA proposes to follow the same approach to deferrals for purposes of part 71.

2. Permanently Exempted Source Categories

The EPA proposes to exempt permanently two source categories from the requirement to obtain a part 71 permit:

(1) All sources that would be required to obtain a permit solely because they are subject to regulation under the demolition and renovation provisions of the NESHAP for asbestos (40 CFR 61.145); and

(2) All sources that would be required to obtain a permit solely because they are subject to regulation under the NSPS for residential wood heaters (40 CFR 60.530).

These source categories were exempted from permitting requirements under part 70 because the Administrator determined that permitting such sources would be impracticable, infeasible, and unnecessarily burdensome. This exemption is proposed to be continued for part 71. A more detailed rationale for this exemption is provided in the preamble to the part 70 regulations at 57 FR 32263–32264 (July 21, 1992), which EPA today incorporates by reference for purposes of part 71.

3. Major Section 112 (HAP) Sources

Like the proposed revisions to part 70 of this chapter, today's proposal would ensure that the definition of major source in this part matches the definition in section 112(a) of the Act and in the regulations governing HAP sources recently promulgated in 40 CFR part 63. Under 40 CFR Part 63, EPA definition of a major source of HAP is more inclusive than the definition originally promulgated in part 70. Unlike part 70, the part 63 definition of major source does not reference standard industrial classification (SIC) codes. As defined in part 63, an entire contiguous or adjacent plant site is considered a single source, rather than being subdivided according to industrial classification. See 59 FR 12412 (March 16, 1994). This definition does not limit the sources (or emission units) that can be included in a stationary source to those having the same 2-digit code. One result of this more inclusive definition is that there will likely be some HAP sources that are major under part 63 but are not major under part 70, as originally promulgated. The EPA believes it is necessary to expand the major source definition in part 70 and part 71 to include all sources that are major for part 63. Otherwise, those sources subject to a section 112 standard or other requirement will not have to apply for and obtain a part 71 permit until required to do so by a specific section 112 standard. Today's proposal, and the proposed revisions to part 70 of this chapter, reflect the more inclusive part 63 definition and ensure that HAP sources are treated consistently under rules promulgated pursuant to section 112 and title V of the Act.

4. Section 112(r) Pollutants

Section 70.3(a)(3) of this chapter, as originally promulgated, requires any source subject to a standard or other requirement under section 112 of the Act to obtain a part 70 permit unless it would be subject to part 70 solely because it is subject to regulations or requirements under section 112(r). Section 112(r)(3) requires EPA to promulgate a list of regulated substances and thresholds for the prevention of accidental releases. Section 112(r)(4) establishes criteria for the development of a list of regulated substances, focusing on acute effects that result in serious off-site consequences, rather than chronic effects. As a result, many of the substances listed in § 68.130 of this chapter pursuant to section 112(r)(3) (59 FR 4478 (January 31, 1994)) are not regulated elsewhere under the Act.

Questions have been raised as to whether § 70.3(a)(1) of this chapter, which provides that ''any major source'' is subject to the permit rule, requires that sources that have major source levels of section 112(r) pollutants must be permitted. Setting aside the issues of whether and how major source status is to be determined for section 112(r) purposes, section 112(r)(7)(F) exempts from title V permitting requirements any source that would be subject to title V only as result of being subject to section 112(r) requirements. That section provides that ''(n)otwithstanding the provisions of title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such title solely because such source is subject to regulations or requirements under this subsection.'' Thus, it is clear that even if a source could be considered a ''major source'' for section 112(r) purposes, it would not be subject to title V permitting on that basis alone. The EPA's proposed revisions to 40 CFR part 70 would revise § 70.3(a) of this chapter to clarify this point. Similarly, proposed § 71.3(a) reflects this approach.

C. Section 71.4—Program Implementation

Proposed section 71.4(a) describes the circumstances in which EPA would establish a full or partial Federal operating permits program for a State, excluding Tribal areas. Section 502(d)(3) of the Act requires EPA to promulgate, administer, and enforce a program for a State if an operating permits program for the State has not been approved in whole by November 15, 1995. However, the requirement that EPA establish a Federal program by November 15, 1995 for States lacking a fully approved program is suspended if a State program is granted interim approval. The duty to implement a Federal program then reapplies upon expiration of an interim approval, if the State has not received full approval by that time.

As provided in proposed § 71.4(a)(3), EPA would have the authority to

establish a partial part 71 program in limited geographical areas of a State if EPA has approved a part 70 program (or combination of part 70 programs) for the remaining areas of the State. This should avoid unnecessary disruption of partial programs that have been approved within a State and avoid intruding into the State's administration of its air program where only certain jurisdictions have failed to implement an approvable part 70 program.

The proposed rule also provides for EPA implementation of part 71 programs to ensure coverage of Tribal areas. The proposed Tribal rule generally describes EPA's authority for implementing programs under the Act to protect Tribal air quality. 59 FR 43960–43961. That discussion is incorporated here by reference.

In broad overview, the Act authorizes EPA to protect air quality on lands over which Indian Tribes have jurisdiction. The overarching purpose of the Act is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' section 101(b)(1). The members of the public residing on lands over which Tribes have jurisdiction are equally entitled to air quality protection as those residing elsewhere.

Several provisions of the Act evince Congressional intent to authorize EPA to directly implement programs under the Act where there are voids in program coverage (e.g., sections 110(c)(1), 301 (d)(4) and 502 (d)(3), (i)(4)). Federal implementation of Clean Air Act programs on Indian lands is particularly appropriate where Federal action will prevent a ''vacuum of authority'' in air quality protection. See *Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545, 555–56 (10 Cir. 1986) (affirming EPA's authority to directly implement Safe Drinking Water Act Underground Injection Control program on Indian lands where concluding otherwise would contradict the meaning and purpose of the Act by creating ''a vacuum of authority over underground injections on Indian lands, leaving vast areas of the nation devoid of protection from groundwater contamination''). Based on the proposed interpretation of Tribal jurisdiction under the Act in EPA's Tribal rule, discussed previously, EPA would have authority under today's proposed rules to implement part 71 programs for all areas within the exterior boundaries of an Indian reservation and other areas over which an Indian Tribe has jurisdiction.

If finalized as proposed, the Tribal rule will authorize Tribes to develop and submit title V operating permit programs to EPA for approval. The EPA's principal objective would be to assist Tribes in developing and administering their own title V operating permit programs, similar to the manner in which EPA has assisted States. The EPA recognizes that ultimately Tribes are best situated to provide primary protection of Tribal air resources. To these ends, EPA's proposed Tribal rule provides the following:

> It is EPA's policy to assist Tribes in developing comprehensive and effective air quality management programs to insure that Tribal air quality management programs will be implemented to the extent necessary on Indian reservations. EPA will do this by, among other things, providing technical advice and assistance to Indian Tribes on air quality issues. EPA intends to consult with Tribes to identify their particular needs for air program development assistance and to provide on-going assistance as necessary.

59 FR 43961.

However, EPA also intends to be prepared to implement title V programs in the event Tribes do not. To avoid gaps in title V permits program coverage, the rules proposed today authorize EPA to implement a title V operating permits program for Tribes that do not develop their own programs.

The more difficult issue is when EPA should implement title V programs for Tribes. EPA believes it is reasonable to give Tribes some opportunity to develop their own title V programs, assuming EPA's final Tribal rule authorizes them to do so, before EPA directly implements title V programs.

The part 71 rules propose to authorize EPA to implement the title V permit program for Tribes if a Tribal program has not been fully approved by November 15, 1997. Within the first two years of the program, the permitting authority would be required to take action on all applications submitted in the first year of the program. Nothing in today's proposal would prevent EPA from implementing a part 71 program for a Tribal area subsequent to November 15, 1995 but prior to November 15, 1997. It may be appropriate, particularly where the absence of an operating permits program would create a gap in coverage, for EPA to implement part 71 programs in advance of the effective date set by the rule. The EPA would discuss early implementation with the affected Tribe before adopting an earlier effective date. In such a case, the program would become effective when the Administrator provides written notice to the Tribal chairperson or analogous Tribal leader.

The EPA considered several factors in addressing this issue including: The opportunity for the development of Tribal programs that would render Federal implementation unnecessary; the importance of title V coverage, whether Tribal or Federal, in protecting Tribal air quality; and, the need to treat the potentially affected regulated community fairly and to facilitate certainty in business planning. The EPA solicits comments on whether the EPA's proposed approach to the effective date of the program is appropriate and whether the two-year deadline for taking action on permit applications is appropriate and feasible.

The proposed Tribal rule describes an administrative procedure by which EPA would resolve jurisdictional issues affecting Tribes. See 59 FR 43962–43963 (Aug. 25, 1994). That discussion is incorporated here by reference. Generally, EPA expects these issues to involve the precise boundary of the reservation in question and, less frequently, competing claims of jurisdiction over land which is outside of the exterior boundaries of a reservation.

Briefly summarized, the proposed Tribal rule would require EPA to notify the appropriate governmental entities regarding the Tribe's assertion of jurisdiction.[1] Those entities would have fifteen days following receipt of EPA's notification to provide formal comments to EPA regarding any dispute they might have with the Tribe's assertion of jurisdiction. Where the dispute concerns jurisdiction over off-reservation lands, appropriate governmental entities may request a one-time fifteen-day extension to the comment period. In all cases, comments from appropriate governmental entities would have to be offered in a timely manner and be limited to the Tribe's jurisdictional assertion. Where no timely comments are presented, EPA would conclude there is no objection to the Tribe's assertion. To raise a competing or conflicting claim, a commenter would be required to clearly explain the substance, basis, and extent of its objections. Finally, where EPA receives timely notification of a dispute, it could obtain such additional information and documentation as it believes appropriate and, at its option, consult with the Department of the Interior.

For purposes of identifying the Tribal area for which a part 71 program is

[1] For purposes of this rule, EPA is proposing to adopt the same definition of ''governmental entities'' as the Agency did in its December 1991 Water Quality Standards regulation. See 56 FR 64876 at 64884 (Dec. 12, 1991).

implemented, EPA proposes to follow the approach to resolving jurisdictional issues taken in the Tribal air rule. If the Tribal rule is finalized as proposed, EPA would notify appropriate governmental entities of the boundary of the Tribal area for a part 71 program at least 90 days prior to the effective date of the program. Those entities would then have an opportunity to provide formal comments prior to the program's effective date, as discussed above. Where no timely comments are presented, EPA would make a determination that the boundary for the part 71 program would be as proposed in the notice. Subsequently, EPA would publish a notice in the **Federal Register** which describes the precise boundaries of the part 71 program.

Where EPA identifies a jurisdictional dispute, it may obtain additional information and documentation and consult with the Department of the Interior prior to making a determination. The EPA would subsequently publish a notice in the **Federal Register** which describes the precise boundaries of the part 71 program. If the dispute cannot be resolved promptly, EPA would retain the option of implementing the part 71 program in the areas that are clearly shown to be part of the reservation (or are otherwise within the Tribe's jurisdiction). This will allow EPA to implement a part 71 program that covers all undisputed areas, while withholding action on the portion that addresses areas where a jurisdictional issue has not been satisfactorily resolved.

As proposed in § 71.4(c), EPA would promulgate a part 71 program for a permitting authority (including an eligible Tribe) if EPA determines that an approved program is not adequately administered or enforced and the permitting authority fails to correct the deficiencies that precipitated EPA's finding.[2] Where the acid rain portion of an operating permits program is not adequately administered, EPA could withdraw either the entire program or just the acid rain portion of the program. If EPA finds that the nonacid rain portion of the operating permits program is being adequately administered, EPA would generally withdraw only the acid rain portion. In such a case, EPA would issue the acid rain portion of the source's permit using the procedures set forth in 40 CFR part 72, and the State would continue to issue the remaining portion of the operating permits and would issue all permits to sources other than acid rain sources.

When EPA determines that a State is not adequately administering its program, EPA would provide notice to the State as required by 40 CFR 70.10(b)(1). The State would then have 90 days in which to take significant action to assure adequate administration and enforcement of the program. Where EPA determines that the State has not taken such significant action within the specified time, EPA could begin implementing a Federal program immediately. Otherwise, if the State had not fully corrected the deficiency that prompted EPA's determination of failure to administer or enforce within 18 months of the determination, EPA would begin implementing a Federal program 2 years after the date of the determination. This framework is identical to that which EPA promulgated in part 70 at 40 CFR 70.10(b) (2) and (4).

The EPA acknowledges that its intent to retain the option of withdrawing only the acid rain portion of a program in appropriate situations is a change of position from EPA's statement in the preamble to the final part 70 rule (see 57 FR 32260) that should a State fail to adequately administer phase II of the acid rain program, EPA will take back the entire operating permits program. There, EPA stated that in such a situation EPA would implement part 71, as supplemented by Federal acid rain permit issuance procedures, and would issue permits to acid rain sources within the State. The EPA notes that this discussion was not reflected in regulatory language in the finally promulgated part 70 rule, which instead provided EPA discretion to withdraw program approval in whole or in part. See 40 CFR 70.10(c)(1). Moreover, EPA explained in a May 21, 1993 guidance document entitled ''Title IV–Title V Interface Guidance for States,'' that if EPA finds that a part 70 program is not being properly administered or enforced for title IV purposes, EPA will publish a notice in the **Federal Register** making this announcement and noting where permit applications are to be delivered. When publishing such a **Federal Register** notice, EPA may elect to withdraw approval for an entire part 70 program submittal or only the acid rain portion of it and may apply appropriate sanctions under section 179(b) of the Act.

Under part 71, EPA would retain the option of withdrawing only the acid rain portion of the program and issuing a phase II acid rain permit, rather than withdrawing the entire part 70 program and issuing a comprehensive part 71 operating permit. The EPA believes that it is reasonable and appropriate to depart from the policy stated in the preamble to the final part 70 rule regarding withdrawal of phase II acid rain authority because EPA believes that deficiencies with respect to the acid rain portion of a State program would generally not adversely affect the remaining portions of the State program. By withdrawing approval of just the acid rain portion, EPA would minimize disruption of otherwise adequate State air programs. It should be noted that the acid rain portion of a source's operating permit contains discreet requirements that are not intertwined with the remaining provisions of the permit. For example, phase II acid rain permits generally contain a requirement that a source hold sufficient allowances to cover emissions, specify requirements for NO_X emissions and provide for continuous emissions monitoring in accordance with 40 CFR part 75. Amendments and revisions to such provisions are subject to a different set of procedures as specified in 40 CFR part 72. Thus, separate Federal administration of the acid rain permitting program in a State that fails to adequately administer the acid rain portion of its operating permits program would be a logical step where the remainder of the part 70 program was being adequately administered by the State.

The EPA solicits comment on this approach, and on whether this approach is consistent with the requirements of title V. The EPA stresses that section 502(i)(1) of the Act allows EPA to determine that only a portion of an approved State program is not being adequately administered and enforced. While section 502(i)(1) does not explicitly provide that where a State fails to correct an identified deficiency in a finding under section 502(i)(4), EPA may promulgate, administer, and enforce only the relevant portion of the program, EPA believes that Congress could not have intended for EPA to be compelled to withdraw and take over entire part 70 programs where only discrete portions of the program are deficient. Such a result would be unnecessarily disruptive of State air programs and would require much greater Federal intrusion into the State's air program than may be necessary to correct the faulty portion.

[2] Although this preamble section addresses withdrawing approval of State operating permit programs, note that eligible Tribes would be treated in the same manner as States for purposes of withdrawal of program approval, assuming the Tribal rule is finalized as proposed. In that case, the provisions of 40 CFR 70.10(b)(1), which address State failure to administer or enforce an approved part 70 program, and 40 CFR 70.10(c), which addresses criteria for withdrawal of State programs, would apply equally to Tribal programs.

Section 71.4(d) addresses the circumstances in which EPA proposes to issue permits to OCS sources (sources located in offshore waters of the United States) pursuant to the requirements of section 328(a) of the Act. Section 328 of the Act transferred from the Department of the Interior to EPA the authority to regulate air pollution from sources located on the OCS off of the Atlantic, Arctic, and Pacific coasts and in the Gulf of Mexico east of 87.5 degrees longitude. In today's notice, which proposes revisions to 40 CFR part 55 in addition to the proposed Federal operating permit rules, EPA is proposing to require an OCS source to comply with the requirements of part 71 if the source is located beyond 25 miles of States' seaward boundaries or if the source is located within 25 miles of a State's seaward boundary and the requirements of part 71 are in effect in the corresponding onshore area (COA). Section 328 requires that EPA establish requirements for sources located within 25 miles of a State's seaward boundary that are the same as would be applicable if the source were located in the COA.

Part 71 permits would be issued to OCS sources by the Administrator or a State or local agency that has been delegated the OCS program in accordance with part 55 of this chapter. As OCS sources beyond 25 miles of States' seaward boundaries would become subject to part 71 immediately upon the effective date of part 71, they would be required to submit part 71 permit applications within 1 year of becoming subject to this part.

Proposed § 71.4(e) describes how EPA would take action on objectionable permits that have already been proposed or issued by a permitting authority. Section 505(b) of the Act and 40 CFR 70.8 (c) and (d) require EPA to object to the issuance of any permit that EPA determines is not in compliance with the applicable requirements of the Act. If the permitting authority does not take appropriate action in response to EPA's objection, EPA shall revise, terminate, or revoke the permit if it has been issued and shall correct and issue the permit if it has not been issued.

As provided in 40 CFR 70.7(g) (§ 70.7(j) in the proposed revisions to part 70), if EPA finds that a State-issued permit must be reopened to correct an error or add newly applicable requirements, EPA will notify the permitting authority. If the permitting authority does not take appropriate action, EPA will revise and reissue the permit under part 71.

As provided at 40 CFR 70.8(c)(1), EPA will object to the issuance of any proposed permit that EPA determines is not in compliance with the applicable requirements of the Act or the requirements of part 70. If EPA objects within 45 days of receipt of a copy of the proposed permit, the permitting authority may not issue the proposed permit to the source. The EPA's objection, as required by 40 CFR 70.8(c)(2), shall include a statement of EPA's reasons for objecting and a description of the permit terms that the permit must include to respond to the objection. Moreover, under 40 CFR 70.8(c)(3), failure of the permitting authority to: (1) Comply with requirements in 40 CFR 70.8 (a) and (b) to notify EPA and affected States, (2) submit to EPA any information necessary to adequately review the proposed permit, or (3) process the permit under procedures approved to meet the public participation requirements of part 70 would also constitute grounds for EPA objection to a proposed permit.

Under 40 CFR 70.8(c)(4), if the permitting authority fails within 90 days after EPA's objection to revise and submit to EPA a new proposed permit responding to the objection, EPA will issue or deny the permit. Proposed § 71.4(e)(1) would establish the authority for EPA's permit issuance or denial in these situations.

Likewise, proposed § 71.4(e)(1) would establish the authority for EPA to revise, terminate, or revoke a permit in response to a citizen petition filed under 40 CFR 70.8(d). The EPA's action to revise, terminate or revoke a permit would then occur consistent with 40 CFR 70.7(g)(4) or (5)(i) and (ii) (§§ 70.7(j)(4) or (5)(i) and (ii) of the proposed revisions to part 70), except in unusual circumstances, such as where there is a substantial and imminent threat to the public health and safety resulting from the deficiencies in the permit. Usually, the permitting authority would have 90 days from receipt of EPA's objection in response to a citizen petition to resolve the objection and terminate, revise, or revoke and reissue the permit in accordance with EPA's objection. See 40 CFR 70.7(g)(4), § 70.7(j)(4) of the proposed revisions to part 70. If the permitting authority failed to resolve the objection, EPA would terminate, revise, or revoke and reissue the permit, after providing at least 30 days notice to the permittee in writing of the reasons for such action (which may be given at any time during the time period after EPA objects to the permit) and providing the permittee an opportunity for comment on EPA's proposed actions and an opportunity for a hearing. See 40 CFR 70.7(g)(5)(i) and (ii) and §§ 70.7(j)(5)(i) and (ii) of the proposed revisions to part 70. Proposed § 71.4(e)(2) would provide the authority for EPA to take such action.

Section 71.4(f) of the proposed rule would authorize EPA to use part 71 in its entirety or any portion of the regulations, as needed. For example, EPA could use the provisions for permitting OCS sources without permitting any other types of sources. Similarly, EPA could use only portions of the regulations to correct and issue a State permit without, for example, requiring an entirely new application. Proposed § 71.4(f) would also authorize EPA to exercise its discretion in designing a part 71 program. The EPA would be able to, through rulemaking, modify the national template by adopting appropriate portions of a State's program as part of the Federal program for that State, provided the resulting program is consistent with the requirements of title V.

The EPA believes it is reasonable and appropriate to provide this flexibility in implementing a part 71 program. First, such flexibility would enable EPA to intervene in the administration and enforcement of an operating permits program only to the extent necessary to correct deficiencies. Second, it would provide EPA, after notice and comment rulemaking, the ability to appropriately tailor part 71 to the State in which it would be implemented, thus resulting in less disruption of the State air program and the daily operations of covered sources than might otherwise occur. While EPA believes that part 71 as proposed today should not result in unnecessary disruption, the Agency recognizes that further State-specific tailoring may be appropriate.

Proposed § 71.4(g) clarifies that EPA would publish a notice of the effective dates of part 71 programs. The EPA would publish such notice in the **Federal Register** and would, to the extent practicable, publish notice in a newspaper of general circulation in the area affected by the part 71 program. The EPA would also publish such notice for delegations of part 71 programs. Finally, in addition to notices in the **Federal Register** and newspapers of general circulation, EPA would send a letter to the Governor (or his or her designee) or the Tribal governing body for the affected area informing him or her of when the part 71 program or its delegation would become effective.

Section 71.4(h) proposes that EPA would be authorized to promulgate and administer a part 71 program in its entirety even if only limited deficiencies exist in a State or Tribal program. The EPA believes that such authority is

necessary because limited deficiencies could have wide-ranging impacts within a program. For example, if a State program failed to provide adequate opportunities for public or affected State participation in permitting actions, the integrity of permit content could become suspect, the public and affected States would be excluded from administrative and judicial review of permit actions, and EPA oversight of such actions could suffer, as a result of citizens not having standing to petition EPA to object to permits.

Section 71.4(i) of the proposed rule describes how EPA would take action on the initial part 71 permits in the event that a full or partial part 71 program becomes effective in a State or Tribal area prior to the permitting authority issuing part 70 permits to all subject sources. The EPA proposes to utilize a 3-year transition plan similar to that required of States under § 70.4(b)(11)(ii) of this chapter. Under proposed § 71.4(i)(1), any remaining sources that had not yet received part 70 permits from the permitting authority would be required to submit applications to EPA for part 71 permits within 1 year of becoming subject to the part 71 program. The sources that had already received part 70 permits, if any, would continue to operate under those permits, unless EPA had withdrawn part 70 approval due to the inadequacy of the part 70 permits, in which case those sources would be required to obtain part 71 permits. After receiving part 71 permit applications, EPA would act on one-third of those applications each year for the first 3 years of the part 71 program. As previously issued part 70 permits needed to be revised or renewed, sources would apply to EPA for such revisions or renewals under part 71.

As provided in proposed § 71.4(j), EPA would have the discretion to delegate some or all of its authority to administer a part 71 program to a State or eligible Tribe. The delegation process is described further in the discussion of proposed § 71.10.

Section 71.(4)(k) of the proposed rule would authorize EPA to administer and enforce part 70 permits issued by a permitting authority under a previously-approved part 70 program after EPA has withdrawn approval of such program until they are replaced by part 71 permits issued by EPA.

Proposed § 71.4(l) describes what would happen after EPA approves a part 70 program for an area in which a part 71 program has been effective and how the Administrator, or the new part 70 permitting authority, will administer and enforce the part 71 permits until they are replaced by part 70 permits. For a State that submits a late part 70 submittal to EPA such that EPA has not approved or disapproved the submittal by November 15, 1995, part 71 becomes automatically effective until the State's part 70 program is approved by EPA. However, sources are not obligated to submit applications to EPA until 12 months after they have become subject to an effective part 71 program (unless an earlier submittal date is set by EPA). Therefore, if the State's part 70 program is approved shortly after part 71 is effective, it is highly likely that sources will submit applications to the permitting authority rather than to EPA. Upon approval of the part 70 program, EPA will suspend further action on applications for part 71 permits. Where appropriate, applications received by EPA prior to approval of the part 70 program will be forwarded to the permitting authority after approval of the part 70 program.

Finally, proposed § 71.4(m) provides how EPA would implement the provision of section 325 of the Act if the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands petitions the Administrator to exempt any source or class of sources from the requirements of title V of the Act.

D. Section 71.5—Permit Applications

Much of proposed § 71.5 is modeled on the provisions currently promulgated at 40 CFR 70.5, and on the proposed revisions to that section. See 59 FR 44460 (Aug. 29, 1994). In this notice, EPA incorporates by reference the rationale provided for these provisions, to the extent such rationale apply to a Federal operating permit program as well as to State permit programs. Copies of the part 70 rule as promulgated in July 1992 and of the notice proposing revisions to part 70 have been included in the docket for this rulemaking. The Supplementary Information Document contains a general discussion and explanation of the proposed rule's application requirements. Where proposed part 71 differs from promulgated part 70 or the proposed revisions to part 70 the discussion goes into greater detail describing the part 71 proposal. Where proposed part 71 follows part 70 precedent, shorter general descriptions of the part 71 proposal are supplied. It should be noted that the formatting of proposed § 71.5 does not correspond to that of 40 CFR 70.5. In developing proposed part 71, EPA determined that the formatting of 40 CFR 70.5 could be improved so that it is easier to follow. The EPA requests comment on this proposed formatting difference.

1. Insignificant Activities and Emission Levels

Proposed § 71.5(g) would allow insignificant activities or emission levels to be exempt from the application content requirements of proposed § 71.5(f). These exemptions would reduce the administrative burden on sources by eliminating the requirement that a source include in its application an extensive analysis of insignificant activities (or emissions units) and quantities of emissions. This proposal is based on the part 70 provisions regarding insignificant activities and emissions levels, and is supported by the *Alabama Power* decision, where the court found that emissions from certain small modifications and emissions of certain pollutants at new sources could be exempted from some or all PSD review requirements on the grounds that such emissions would be de minimis. See *Alabama Power* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir., 1979). In other words, EPA may determine levels below which there is no practical value in conducting an extensive review. In general, an agency can create this exemption where the application of a regulation across all classes will yield a gain of trivial or no value. A determination of when a matter can be classified as de minimis turns on the assessment of particular circumstances of the individual case. For EPA to establish that an emissions threshold is trivial and of no consequence, EPA must consider the size of the particular emissions threshold relative to the major source threshold applicable in the various areas where a regulation will be in effect.

In the rulemaking establishing requirements for State operating permits programs under part 70, many commenters suggested that EPA create a de minimis exemption level for regulated air pollutants, and that emissions information not be required for pollutants below this de minimis level. In the final part 70 rule, EPA gave States discretion to develop lists of insignificant activities and to set insignificant emission levels if certain criteria were met and subject to EPA review and approval. In the proposed part 71 rule, EPA has fashioned provisions for insignificant activities or emission levels that meet the minimum requirements for States under the part 70 rulemaking, while taking a unique Federal approach, based on the Agency's experience in reviewing State provisions for insignificant activities and emission levels in the course of part

70 operating permits program reviews. The EPA notes, however, that the part 70 provisions on insignificant activities and emissions levels are the subject of ongoing litigation settlement discussions, and that a possible result of these discussions could be a modification of the part 70 provisions on this issue. To the extent any future proposed revisions to the part 70 insignificant activities and emissions level criteria are more stringent than the provisions proposed for part 71, EPA may have to supplement this proposal to make the two rules consistent.

In this rulemaking, EPA proposes to exempt all information required by proposed § 71.5(f) concerning insignificant activities inclusion in the permit application, while for insignificant emission levels, application information completeness requirements would vary from proposed § 71.5(f). To ensure that all significant information is included in the permit application, the proposed rule includes a provision stating that no activities or emission levels shall be exempt from proposed § 71.5(g) if the information omitted from the application is needed to determine or impose any applicable requirement, to determine whether a source is major, to determine whether a source is subject to the requirement to obtain a part 71 permit, or to calculate the fee amount required under the fee schedule established pursuant to proposed § 71.9. The proposed prohibition against omitting information from the application that is relevant to the determination or imposition of applicable requirements means that an activity (or emissions unit) that has applicable requirements could not be considered as an insignificant activity or to have insignificant emission levels. Applicable requirements in this context include any standard or requirement as defined in proposed § 71.2. The proposed provision that the exemption not interfere with the requirement to obtain a part 71 permit is necessary to insure that all the requirements of the Act are met, because the requirements of title V of the Act are not included in the proposed definition of applicable requirements. An activity or emission level could not be insignificant if it constitutes a major source. An activity or emission level could not be insignificant if omitting the emissions from the application would prevent the aggregate source emissions from exceeding the major source threshold or a threshold that would trigger an applicable requirement, such as a modification under section 112(g). This proposal would further prohibit these exemptions from being used by applicants when information needed to calculate the fee amount required under the fee schedule would be omitted from the application. Although the fee schedule provided in proposed § 71.9(c)(1) would exclude insignificant emissions from being counted for fee purposes, this provision would be retained for instances where the Administrator promulgates a different fee schedule for a particular state pursuant to proposed § 71.9(c)(7). Under such a fee schedule, information concerning insignificant activities or emissions may be needed to calculate the fee amount.

a. *Insignificant Activities.* To meet the requirements of part 70, States submitted rules incorporating a wide variety of approaches for implementing these provisions. Many State part 70 program submittals included extensive lists of insignificant activities. Some of the listed activities were so broadly defined that it was difficult to determine if they would interfere with the determination or imposition of applicable requirements or affect major source status, seemingly inviting the omission of significant information. Some were so narrowly defined that industry would be invited to propose an endless number of additional listings for inclusion in the rules in future years, creating an administrative burden on the States. In the course of EPA's review of part 70 permit program submittals, it was also clear that there were very few insignificant activities that are common among the States. The EPA proposes to include a short list of broadly-defined insignificant activities that are frequently included in State part 70 program submittals. These activities commonly occur in residential settings, are not subject to applicable requirements (with the possible exception of certain SIP-based requirements for residential heating sources that are not commonly adopted on a nation-wide basis), and normally have small quantities of emissions. Emission units at a source that are on the list of insignificant activities in proposed § 71.5(g)(1) could not be treated as insignificant (1) when the activities are subject to an applicable requirement, including an applicable requirement of a Federal or Tribal implementation plan, (2) if information concerning the activities would interfere with any applicability determination, (3) if the insignificant activities constitute a major source, (4) if not counting the emissions from insignificant activities in the total source emissions would prevent the source from being determined to be a major source, or (5) if any information that would otherwise be left off of the permit application would be needed to calculate the fee amount required under the fee schedule established under proposed § 71.9.

b. *Insignificant Emission Levels.* The proposal would further allow emission units or activities with small emissions to be included in the application in a streamlined manner, as long as the application did not exclude information needed to (1) determine or impose applicable requirements, (2) determine the requirement to obtain a permit, (3) determine whether the source is a major source, or (4) calculate the fee amount, and provided the emissions caps of proposed § 71.5(g)(2) were not exceeded. The EPA believes that this would ensure that enough information will be provided that the permitting authority can make a quick assessment of whether the emissions are insignificant. Nevertheless, to ensure that the rule is being applied properly by the applicant, the permitting authority could request additional information if needed. Note that to qualify as insignificant emissions, the emissions could not count toward or trigger a unit-based de minimis permit revision under proposed § 71.7(f). The only emissions units that would have emissions levels qualifying as insignificant under proposed § 71.5(g) would be units that would not be included in the part 71 permit anyway because they could not be subject to applicable requirements, contribute to the triggering of an applicable requirement, or affect a major status determination. Therefore, for existing units with insignificant emissions there would not be any permit terms or conditions to revise and for new units with insignificant emissions there would not be any permit terms or conditions to add to the part 71 permit.

The emissions caps of proposed § 71.5(g)(2) are expressed in terms of potential to emit, not actual emissions. The use of potential to emit is consistent with how major source thresholds (which were used in developing the proposed caps) are defined. Furthermore, EPA believes that basing the caps on potential to emit provides greater assurance that only truly insignificant levels of emissions would be eligible for streamlined treatment on the permit application form.

In commenting on the necessity of de minimis levels to be established in the part 70 rulemaking, one commenter suggested the level be set at 5 tpy or 20 percent of the applicable major source threshold. An examination of these

levels in terms of major source thresholds is necessary to determine if they are trivial. For example, a 5-ton emission is 20 percent of the major source threshold for serious and severe ozone nonattainment areas, but 50 percent of the major source threshold in extreme ozone nonattainment areas. A level set at 20 percent of the applicable threshold would equal 2 tons in extreme ozone nonattainment areas, but would be 20 tons in moderate nonattainment areas. It is not clear that emissions of this size could be characterized as trivial in all areas for all air pollutants, especially because emissions at these levels may trigger State major new source review (NSR), thus triggering applicable requirements.

Therefore, EPA is proposing and soliciting comment on setting the threshold for insignificant emission levels at 1 tpy for regulated air pollutants, except HAP, in all areas except extreme ozone nonattainment areas, where the threshold is proposed to be 1,000 pounds (lb) per year. These levels would be 1 percent of the major source threshold in moderate nonattainment areas, 2 percent in serious ozone nonattainment areas, 4 percent in severe ozone nonattainment areas, and 5 percent of the threshold in extreme ozone nonattainment areas. The EPA believes that these levels are trivial and would not prevent EPA from collecting any information of a consequential or significant nature. The lower threshold for extreme ozone nonattainment areas is necessary due to the increased concern that permitting authorities would have in such areas. Permitting authorities in these areas have collected information pertaining to permitted sources with relatively small emissions. This level of concern has been necessary in order to achieve emission reductions sufficient to make progress towards meeting the NAAQS.

The EPA proposes and solicits comment on setting the exemption threshold for HAP for any single emissions unit to be the lesser of 1,000 lb per year or the de minimis levels established under section 112(g) of the Act. In the part 70 rulemaking, EPA recommended that the emissions levels for HAP established for the purpose of setting insignificant emission levels not be less stringent than the levels established for modifications under section 112(g) of the Act. Although this was only a recommendation, many States structured their emissions levels for HAP using these levels as upper bounds. Note that the provisions of proposed § 71.5(g) would prevent a part 71 emissions unit from having insignificant emissions levels if the unit was subject to applicable requirements of section 112(g). The EPA also proposes that the level for HAP should never be higher than 1,000 pounds per year. This is necessary because the major source threshold is 10 tpy for a single HAP, thus ensuring that insignificant emissions of HAP will never exceed 5 percent of the major source threshold. The EPA believes that these levels are trivial and would not prevent EPA from collecting any information of a consequential or significant nature.

The EPA proposes and solicits comment on setting the threshold for insignificant emissions for the aggregate emissions of any regulated air pollutant, excluding HAP, from all emission units located at a facility to not exceed a potential to emit of 10 tpy, except in extreme ozone nonattainment areas, where potential to emit may not exceed 5 tpy. The EPA further proposes and solicits comment on setting the threshold for insignificant emissions levels for the aggregate emissions of all HAP from all emission units located at a facility to not exceed a potential to emit of 5 tpy or the section 112(g) de minimis levels, whichever is less. These provisions would provide more certainty to the permitting authority because no emissions values in terms of potential or actual emissions would be required to be included in the application for emissions qualifying as insignificant, and it is conceivable that large quantities of emissions could be hidden from scrutiny without such aggregate emission thresholds. In addition, these provisions would clarify for applicants that large numbers of similar sources, such as valves or flanges, that might be exempt on an individual basis, would have to be described in detail in the application if the aggregate emissions from all the units are relevant to the applicability of the Act's requirements or the determination of major source status.

Minimal information concerning emissions units with insignificant emissions would have to be provided in a list in the application. This list would have to describe the emission units in sufficient detail to identify the source of emissions and demonstrate that the exemption applies. For example, the description ''space heaters'' on a list may not provide sufficient information because there could be an unlimited number of units with potentially significant emissions, but the description, ''two propane-fired space heaters,'' places a limit on any estimate of emissions and would provide enough information. Descriptions may need to specify not only the number of units meeting the description, when more than one unit is included under a single description, but in many cases capacity, throughput, material being processed, combusted, or stored, or other pertinent information may need to be provided. For example, ''storage tank'' would be insufficient, but ''250-gallon underground storage tank storing unleaded gasoline, annual throughput less than 2,000 gallons,'' would be sufficient for quick assessment, because this level of information is sufficient to demonstrate whether any applicable requirements apply and that the 1 tpy emissions cap would most likely not be exceeded.

Emissions units (or activities) with insignificant emissions that might be logically grouped together on the list that would be required by proposed § 71.5(g)(2) but that have dissimilar descriptions, including dissimilar capacities or sizes, would be required to be listed separately in the application. This is necessary to prevent large numbers of emissions units from being grouped together on the list in such a way that the description would be too broad to provide sufficient information to identify the emissions units and provide an indication of whether or not the exemption applies. On the other hand, in certain cases, large numbers of certain activities could be grouped together on the list. For example, a complex facility may have hundreds of valves and flanges where the aggregate potential to emit of all the valves and flanges does not exceed the aggregate emissions cap and there are no applicable requirements that apply to the valves and flanges. In this case, it would most likely be appropriate to list all the valves and flanges together as one listed item, including the number of units meeting the exemption.

The EPA solicits comment on the approach regarding insignificant activities and emission levels proposed in this notice, particularly on whether this approach provides greater clarity than that discussed in promulgated part 70, and whether the approach proposed in this notice would be compatible with the approaches developed by States to date. The EPA also solicits comment regarding whether the approach proposed today provides adequate safeguards to insure that part 71 permit applications do not exclude significant information, especially all information necessary to determine applicability of Act requirements and major source status.

2. Cross Referencing Information in the Application

The permitting authority could allow the application to cross-reference

relevant materials where they are current and clear with respect to information required in the permit application. Such might be the case where a source is seeking to update its title V permit based on the same information used to obtain a NSR permit or where a source is seeking renewal of its title V permit and no change in source operation or in the applicable requirements has occurred. Any cross-referenced documents would have to be included in the title V application that is sent to the permitting authority and that is made available as part of the public docket on the permit action.

3. Application Completeness Determinations

As provided by proposed § 71.5(c), a complete application would be one that the permitting authority has determined contains all the information needed to begin processing. The preamble to the proposed revisions to part 70 discusses two options for providing flexibility when determining application completeness. The first option addresses applications for sources with future-effective compliance dates, and the second option addresses the submittal of less detailed applications for sources that are scheduled to be permitted in the second and third years of the initial phase-in of a part 70 program. See 59 FR 44460 (Aug. 29, 1994).

Although the regulatory language concerning completeness determinations in the part 71 proposal is consistent with the regulatory language in the proposed part 70 revisions, EPA is not anticipating revising the proposed part 71 regulatory language to specifically implement either of the flexibility options discussed in the preamble to the proposed revisions to part 70. As EPA is not as familiar with sources as State and local permitting authorities, EPA is not in a position to adequately quality assure applications that apply such flexibility options. Thus, the use of such flexibility options in determining application completeness could increase the risk of inappropriate completeness determinations by EPA, as well as increase EPA's administrative burden. As a result of this concern, EPA is not proposing to provide for the flexibility options described in the preamble to the revisions to part 70, but solicited comment on this position in the part 71 proposal.

E. Section 71.6—Permit Content

Many of the proposed provisions of § 71.6 follow the provisions of 40 CFR 70.6, which were described and discussed at length in the proposed and final preambles to 40 CFR part 70, and in the recently proposed revisions to part 70. This notice incorporates the rationale provided in the part 70 notices by reference, as appropriate. This discussion focuses on those provisions that are affected by the legal challenges to the part 70 rule and those issues for which the approach proposed to be taken in part 71 differs from that taken in part 70 or the proposed revisions thereto.

The provisions of proposed § 71.6 have been formatted differently than those in 40 CFR 70.6 to consolidate the provisions related to compliance and to make the section easier to follow. The EPA solicits comment on the proposed formatting change.

1. Prompt Reporting of Deviations

Like part 70, proposed part 71 would require that each permit contain provisions for prompt notification of deviations. In both cases, the definition of ''deviation'' is consistent with the definition of deviation in the proposed enhanced monitoring rule. However, part 71 proposes to define ''promptly'' for purposes of reporting deviations from federally-issued permits.

Under this proposal and the proposed enhanced monitoring rule, deviation means any of the following conditions: Where emissions exceed an emission limitation or standard; where process or control device parameter values demonstrate that an emission limitation or standard has not been met; or where observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit. These conditions (except in cases where provisions that exempt such conditions from being federally enforceable violations have been promulgated or approved by the Administrator) would be deemed deviations from part 71 permit requirements and would require prompt reporting to the permitting authority.

Part 71 sources would be required to promptly notify the permitting authority of any deviations. Under part 71, promptly has more than one meaning. This follows the model established in part 70. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, prompt is defined differently depending on the type of pollutant emitted. For deviations concerning a HAP or toxic air pollutant that exceed a permit requirement for at least a one hour duration, prompt reporting would be defined as within 24 hours. Sources emitting other regulated air pollutants at levels that exceed permit requirements for at least two hours would be required to report the deviation within 48 hours.

The EPA recognizes that there are other notification requirements that have been established under other statutes that require sources to provide immediate notification of releases of specific chemicals in reportable quantities to agencies other than EPA and State permitting authorities. Generally these notifications apply to a potential emergency situation such as those requirements in CERCLA and SARA title III. In addition, pursuant to section 112(r), the Chemical Safety and Hazards Investigation Board has the authority to develop regulations for reporting accidental releases of section 112(r) substances. If a reporting regulation is established, it would become an applicable requirement on the source. The EPA stresses that sources must comply with such notice requirements even if they have provided notice to the permitting authority pursuant to proposed § 71.6(f)(3). Failure to provide notices required by these other statutes and their implementing regulations may result in enforcement actions and penalties.

Because the emissions from sources could cover a very large spectrum with a wide range of health effects, the permitting authority may also define in the permit the concentration and time duration of a deviation that must be reported promptly and the schedule for such reporting.

Sources may notify the permitting authority of a deviation by telephone or facsimile within their required time schedule, and must then submit certified written notice within ten working days. All deviations would still have to be included in monitoring reports which would be required to be submitted at least every 6 months or more frequently if required by another applicable requirement (e.g., NSPS or enhanced monitoring).

2. General Permits

Proposed § 71.6(l) would implement section 504(d), which authorizes the permitting authority to issue a ''general permit covering numerous similar sources.'' The approach proposed for part 71 would follow that of part 70 and the recently proposed revisions thereto.

In response to the concerns raised in the legal challenges to the part 70 rule, EPA has reevaluated its approach to

providing for public participation for general permits.

In the most recent part 70 proposal, the following items concerning general permits were proposed: (1) authorization to operate under a general permit is a final action subject to judicial review; and (2) the permitting authority is required to notify the public of sources who have been authorized to operate under a general permit. The latter action could be done as a monthly summary. Proposed § 71.6 follows the approach of the recent part 70 proposal for general permits.

3. Emergency Defense

As provided in proposed § 71.6(o), part 71 permits could contain permit terms that provide that a source can establish an affirmative defense to an enforcement action based on noncompliance due to an emergency. The affirmative defense would not apply to permit terms other than technology-based emission limitations (e.g., MACT standards) and would not apply unless the source provides appropriate documentation as specified in proposed § 71.6(o)(3). The emergency defense would be independent of any emergency or upset provision contained in an applicable requirement.

Although part 71 permits could contain provisions for an emergency defense, EPA notes that sources that produce, process, handle or store a listed substance under section 112(r) or any other extremely hazardous substance nonetheless have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards assessment techniques, to design and maintain a safe facility, and to minimize the consequences of accidental releases.

The EPA is reevaluating the provisions in parts 70 and 71 relating to the emergency defense in light of concerns identified in legal challenges to the part 70 rule. The EPA may propose revisions to the part 70 and part 71 sections providing for the emergency defense before EPA would include such defense in any part 71 permits. In the interim, to ensure consistency with currently promulgated part 70, EPA would include in part 71 provisions allowing permit terms to establish an emergency defense.

4. Operational Flexibility

Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70 rule, EPA included three different methods for implementing this mandate. However, in response to concerns raised by petitioners and State permitting authorities charged with implementing part 70, EPA recently proposed to revise part 70 to eliminate one of those methods and clarify the operation of the others. Today's part 71 proposal adopts the same approach to operational flexibility as discussed in the proposed revision to part 70. The rationale for EPA's position on operational flexibility is set out in the proposed revisions to part 70 (59 FR 44460 (Aug. 29, 1994)), which today's notice incorporates by reference.

5. Referencing of Requirements

Petitioners in the part 70 litigation have asked EPA for clarification on the subject of data that may be referenced but not included in the permit.

In the recently proposed revisions to part 70, EPA has indicated that some referencing might be appropriate, and has requested comment on whether referencing should be allowed for: (1) test methods, (2) definitions, (3) startup, shutdown, or malfunction requirements or plans, and (4) detailed emission calculation protocols. The EPA solicits comments on referencing for part 71 permits.

F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions

This section of the preamble describes EPA's proposed regulations governing permit issuance, renewal, reopening, and revision procedures under part 71. Generally, under a part 71 program such procedures would follow the procedures in the currently promulgated part 70 rule, as recently proposed to be revised. See 40 CFR 70.7 and 59 FR 44460 (Aug. 29, 1994). To the extent part 71 would follow the procedures in existing part 70 and the proposed revisions thereto, this notice incorporates the rationale for those procedures by reference. Where possible, EPA believes it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between the title V permit programs that will be administered throughout the country. National consistency will ensure that sources are not faced with substantially different programs when EPA, as opposed to State agencies, is the permitting authority. Moreover, as most part 71 programs are likely to be of limited duration, consistency with part 70 will enable smooth transition between Federal and State programs, encourage States to take delegation of administration of part 71 programs, help States that have been unable to obtain part 70 approval to phase into the title V program, promote uniformity in public and affected State participation, and provide a level playing field for sources.

In certain respects, the procedures under proposed part 71 would vary from the procedures in part 70. This is usually due to the fact that EPA, as a Federal permitting authority, will not be implementing State air programs in general when it assumes title V responsibilities. Consequently, certain opportunities under part 70, such as new source review merged with title V permit revision procedures, would not be available where EPA is the permitting authority. However, where a State takes delegation of the administration of a part 71 program, some of these opportunities would be available. These variations are discussed in the relevant sections of the discussion below. In other cases, where part 70 and the proposed revisions thereto provide States with flexibility to decide among alternative approaches or define specific elements of permit program procedures in developing their State programs, part 71 would decide these issues in the regulation itself, rather than rely upon further program development. Moreover, in today's notice EPA proposes detailed procedures for permitting actions, similar to those found at 40 CFR part 124 governing other permit programs administered by EPA.

1. Permit Issuance and Renewal

Part 71 would generally follow the currently promulgated part 70, as proposed to be revised in the August 29, 1994, **Federal Register** notice, in establishing procedures for permit issuance and renewal. These procedures are set forth in proposed § 71.7(a)–(c) and are discussed in greater detail in section 3–F–1 of the Supplementary Information Document.

In certain respects, part 71 would differ from part 70 and the proposed revisions thereto. For example, part 71 permitting authorities would be required to provide EPA with statements describing the legal and factual basis for draft permit terms only where the part 71 program has been delegated to a State or Tribal agency for administration. Also, only in cases where EPA has delegated part 71 administration to a State or Tribal agency would EPA would reserve the right to terminate or revoke and reissue a permit when the delegate permitting authority is not taking appropriate action to expeditiously process a permit renewal application.

2. Permit Revisions

Proposed §§ 71.7(d)–(h) would govern how permits are revised under part 71 programs. These procedures would generally follow the 4-track system contained in the recently proposed revisions to part 70. However, certain aspects of the 4-track system would not be available unless EPA had delegated administration of a part 71 program to a State or eligible Tribal agency. Moreover, where the proposed revisions to part 70 would leave it to State discretion to decide certain issues on a program-by-program basis, part 71 would contain specific provisions. Where the permit revision procedures under part 71 would differ from those under proposed part 70, the rationale for those differences is provided in detail. Where the procedures under part 71 would be the same as those under the proposed part 70 4-track system, this notice incorporates by reference the rationale for those provisions contained in the notice for the proposed revisions to part 70. See 59 FR 44460 (Aug. 29, 1994). The part 71 permit revision procedures are discussed in greater detail in section 3–F–2 of the Supplementary Information Document.

The EPA wishes to stress that in first describing this permit revision structure in the proposed revisions to part 70, the Agency solicited comments on ways to simplify what is admittedly a complex system. In light of the extensive comments received concerning the complexity of the proposal, EPA will publish a supplemental proposal covering part 70 permit revision procedures that differs from the August 29, 1994 proposal. The supplemental proposal is expected to be published within a few months of the publication of today's part 71 proposal and has not been developed in time to be incorporated into today's proposal. After the new part 70 procedures are proposed, EPA will most likely need to publish a supplemental proposal for part 71 pertaining to permit revision procedures. If so, EPA would finalize other portions of the rule first in order to be able to administer part 71 programs by November 15, 1995. The EPA expects to promulgate the part 70 permit revisions procedure in time to adjust corresponding sections of proposed part 71, as appropriate, before EPA would receive any applications for permit revisions under a part 71 program.

a. *Administrative Amendments.* The provisions governing administrative amendments to part 71 permits would be located at proposed § 71.7(e). Today's proposal would follow existing part 70 in allowing changes that are generally clerical in nature to be made pursuant to administrative amendment procedures. Also, like the proposed revisions to part 70, part 71 would allow increases in the frequency of required testing, monitoring, recordkeeping and reporting to be incorporated through the administrative amendment process. While part 70 provides a subsequent opportunity for identifying other changes similar to those just described for processing as administrative amendments in the program approval stage, part 71 would not, simply because after promulgation of this rule there would be no further stage of part 71 program development.

Where EPA has delegated administration of a part 71 program to a State or eligible Tribe, part 71 would follow the recent proposed revisions to part 70 by allowing changes that undergo ''merged'' part 71/NSR or part 71/section 112(g) process to be incorporated into the part 71 permit as administrative amendments. For purposes of part 71, this opportunity to follow proposed part 70 would exist only where States or eligible Tribes take delegation of the part 71 program. When administering a part 71 program for a State, EPA would not also be implementing the State's preconstruction program, so EPA would not be able to upgrade the State's preconstruction program to part 71 process. While this eliminates a significant opportunity for streamlined permit revision where EPA is acting as the permitting authority, EPA believes that it is infeasible for EPA to merge preconstruction review and part 71 review unless the same permitting authority processes both actions. Moreover, to the extent States take delegation of part 71 programs, this opportunity for flexibility will be present. The EPA solicits comment on the proposed limited availability of merged processing under part 71 and suggestions for ways in which this merged processing could be more feasibly provided.

In delegation agreements, EPA and delegate agencies could agree that delegate agencies could conduct merged processing on a case-by-case basis. That is, delegate agencies could be authorized to provide merged process for all or some of their preconstruction determinations or to allow sources to elect merged process for only individual changes. Delegate agencies that provided merged process on only a case-specific basis would have to state when they are doing so in the initial notification of the permit action sent to EPA. A delegate agency that wished to provide for merged NSR changes would have to set out the eligibility criteria and process for merged NSR changes in its application for delegation to EPA. Depending on existing State statutory or regulatory provisions, no changes would be required to existing NSR programs.

While under the proposed revisions to part 70 EPA would require States to submit eligibility criteria for merged processing in their part 70 programs that EPA would review in the context of program approval, EPA believes that the process in part 71 for applying for delegation and entering into delegation agreements provides an adequate forum for evaluating a delegate agency's ability to provide merged processing. Similarly, EPA believes that delegation agreements are adequate vehicles for establishing a delegate agency's authority to merge preconstruction and part 71 actions on a case-by-case basis. The delegation process requires the State to submit evidence of adequate statutory and regulatory authority to carry out part 71 responsibilities, and EPA would publish delegation agreements in the **Federal Register**, giving notice of the delegate agency's authorization to provide for merged processing.

Consistent with the proposed revisions to part 70, part 71 would allow administrative amendment procedures to be used to incorporate standards promulgated after permit issuance pursuant to section 112 of the Act.

For all changes that qualify as administrative amendments, the part 71 permitting authority would use specific procedures to incorporate those changes into the permit. Generally, these procedures would follow those contained in the August 29, 1994, proposed revisions to part 70, but would differ in certain respects. For example, the part 71 permitting authority would be required to provide EPA with a copy of the effective permit addendum reflecting the change only where EPA has delegated a part 71 program to a State or eligible Tribe.

b. *De Minimis Permit Revisions.* Following the proposed revisions to part 70, EPA is proposing at § 71.7(f) a de minimis permit revision track in part 71 for changes that do not undergo merged program administrative amendment procedures but that have only a small emissions impact. Under this track, a source would be able to operate the change as early as the day it submits its permit revision application. Public and affected State review of the change would then follow. See the more detailed discussion in section 3–F–2–b of the Supplementary Information Document, as well as the Agency's preamble for the proposed revisions to

part 70 (59 FR 44460, Aug. 29, 1994) regarding the types of changes that would be eligible for this process, the details of the process itself, and the rationale for the creation of this revision track.

In certain respects, the de minimis track in part 71 would differ from that in proposed part 70. For example, a person who was unsuccessful in persuading the part 71 permitting authority to disapprove a source's requested de minimis change could not petition EPA to object to the permit. This is because both when EPA is the permitting authority and when EPA has delegated that responsibility, citizens will already have the opportunity to directly appeal the final de minimis permit revision to the Environmental Appeals Board. Thus, requiring an intermediate step of requesting EPA to object to its own permitting action would both be redundant and delay citizen access to administrative, and ultimately judicial, review of the change. The Agency solicits comment on this approach. While the proposed revisions to part 70 would leave States discretion in developing their part 70 programs in determining whether the source, versus the State permitting authority, would have the responsibility to provide public notice of de minimis changes, under part 71, sources would have that duty. This specificity is due to the fact that EPA, unlike States, will not be conducting further program development for part 71 programs beyond promulgating part 71, so it is necessary for EPA to establish in this rule whether the public notification duty will fall on sources or the permitting authority. The EPA proposes to place the public notice responsibility on sources because the Agency believes that sources will be in a better position to provide timely notice of their de minimis changes than EPA regional offices would be and will have more ready access to area newspapers for providing such notice. Consequently, requiring sources to provide notice should ensure that de minimis changes are expeditiously processed. Moreover, EPA believes that under the proposed revisions to part 70, revised State programs could commonly require sources to provide such notice, and consistency in implementation of de minimis permit revision procedures will aid program transition when States obtain part 70 approval or when EPA assumes permitting responsibilities.

As under the proposed revisions to part 70, the scope of de minimis changes would be defined in two ways. Any change at a small emissions unit (''unit-based'' de minimis) would qualify, as would a small change at a large unit (''increment-based'' de minimis), provided certain conditions designed to ensure the enforceability of the resulting permit limit were met. Unlike the proposed revisions to part 70, for part 71 EPA is not proposing that permitting authorities, whether they are EPA or delegate States or eligible Tribes, could establish alternative de minimis emissions thresholds based on a demonstration submitted subsequent to final promulgation of part 71. This is because, again, after promulgation of part 71, EPA will not be further developing part 71 programs, so there will not be an opportunity to consider alternative de minimis thresholds. Moreover, EPA does not believe that EPA delegation of part 71 administration to States or eligible Tribes provides an adequate forum for evaluating alternative thresholds developed by States or eligible Tribes, since there will be no formal approval action in those delegations and the public will not have an opportunity to comment upon them before they are effective.

Procedurally, part 71 would also provide more specificity than would the proposed revisions to part 70. For example, the source could operate the requested de minimis change 7 days after the permitting authority received the application or, with the permitting authority's permission, as early as the day its application is submitted. The proposed revisions to part 70 provide that States in developing their part 70 programs would have discretion to allow changes to be made 7 days following receipt of the application, and such authorization would be included in their program submittals for EPA approval; as discussed above, since promulgation of part 71 will represent the final stage of part 71 program development, proposed part 71 specifies that sources could make de minimis implement changes after 7 days.

Also, under part 71, sources would be required to provide public notice of de minimis changes on a monthly, batched basis, publishing one notice listing all changes at the source for which applications for de minimis permit revisions had been sent to the permitting authority in the preceding month. The EPA solicits comment on this approach, particularly regarding the extent to which States intend to impose the public notification duty on sources under the proposed revisions to part 70. While the proposed revisions to part 70 specified neither who has the responsibility for providing public notice nor the manner in which public notice should be given, part 71 would be specific on these points, for the reasons discussed above. The EPA solicits comment, however, on the method or methods sources could use to provide such notice. For example, sources could be required to publish notice of de minimis changes in a newspaper of general circulation within the area where the source is located or in State or local governmental publications, to send actual notice to interested persons on a list developed by the source or the permitting authority, or both. At minimum, the final rule will provide a mechanism to ensure that public notice reaches all interested citizens.

c. *Minor Permit Revisions.* Under today's proposal, most changes ineligible for administrative amendment or de minimis permit revision procedures would be eligible for the minor permit revision process. Taking the current part 70 rule's minor permit modification process as a starting point and following the proposed revisions to part 70, proposed part 71 would add expedited procedures for providing public notice and a 21-day comment period, allow the source to operate the requested change at the end of the 21-day comment period when no objections are received, and provide for permitting authority final action to be taken on applications within 60 days of their receipt. The description of and the rationale for EPA's proposed minor permit revision process for part 70 is contained in the preamble to the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994). To the extent applicable to part 71, EPA incorporates that rationale for this notice. However, where elements of the minor permit revision track differ in proposed part 71 from those in part 70, this notice describes those differences. A more detailed discussion of the part 71 minor permit revision process is contained in section 3–F–2–c of the Supplementary Information Document.

For part 71 minor permit revisions, as for de minimis changes and merged program administrative amendments, notice to EPA, and EPA's 45-day review period and opportunity to veto would occur only where EPA had delegated its role as the permitting authority to a State or eligible Tribe. While this is a departure from the proposed revisions to part 70, as discussed previously, EPA does not believe there is any utility, when EPA is the permitting authority, in requiring EPA review of EPA permitting action, since sources, affected States and public citizens that object to EPA permitting actions will be able to directly appeal those decisions to the Environmental Appeals Board.

Consequently, providing for an additional step of EPA review and opportunity to object would unnecessarily slow down this expedited revision track and would also delay access of interested parties to administrative and judicial review.

Moreover, in cases of objections to minor permit modifications filed by affected States, only where EPA had delegated part 71 administration to a State or eligible Tribe would the part 71 permitting authority have to forward to EPA a written response to any of these objections that were not accepted.

Another difference under the part 71 program would be that if the permitting authority failed to act on a public objection, the commenter could file suit in Federal court, rather than State court, to force the permitting authority to take action on the written comment. In addition, commenters would be able to bring suit in Federal court to seek an injunction against the source implementing or continuing to implement requested changes before they are approved. Injunctive relief would be available in accordance with applicable standards for obtaining such relief under Federal law.

Also, only where EPA had delegated a part 71 program to a State or eligible Tribe, would the part 71 permitting authority be required to wait until the date after EPA's 45-day review period had expired, provided EPA had not objected, before issuing the final minor permit revision. The delegate agency would be required to take final action by day 60, or 15 days after the close of EPA's review period, whichever is later. In addition, under part 71 programs, commenters may not petition EPA to object to minor permit revisions for the reasons discussed above with respect to de minimis permit revisions.

d. *Significant Permit Revisions.* Following the proposed revisions to part 70, under proposed part 71 the significant permit revision process would essentially follow that of the significant permit modification track in existing part 70. See the description of this process in the Agency's proposed revisions to part 70 (59 FR 44460, Aug. 29, 1994) for the rationale for this approach, which EPA incorporates by reference for purposes of part 71. See also the more detailed description of the part 71 significant permit revision process contained in section 3–F–2d of the Supplementary Information Document.

Proposed part 71 would require the permitting authority to take final action on applications for significant permit revisions within 18 months of receipt of the application. However, because prompt action on permit revisions is of critical importance to industry, the EPA intends to complete such revisions within 12 months and expects that only the most complex revisions would require more than a year to complete.

e. *Alternative Option for Monitoring Changes.* Following the proposed revisions to part 70, EPA also proposes as an option in part 71 alternative provisions governing changes involving monitoring requirements. While this option essentially adheres to the 4-track system discussed above, certain provisions of the system would need to be modified to incorporate the alternative option for monitoring changes. The rationale for this alternative option is discussed in detail in the preamble to the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994), and this notice incorporates that rationale by reference, to the extent it is applicable to part 71. As appropriate, EPA intends to match in the final part 71 rule the final part 70 provisions regarding this option. For a more detailed discussion of this option under part 71, see section 3–F–2–e of the Supplementary Information Document.

Under part 71, the source, rather than the permitting authority, would have the responsibility to provide monthly batch public notice of monitoring changes processed under this option's de minimis permit revision track. Moreover, for monitoring changes processed under this option's significant permit revision track, part 71 permitting authorities would be required to send demonstrations and their evaluations to EPA only where EPA has delegated part 71 program administration. Again, EPA believes that expeditious process of de minimis permit revisions is better served by sources providing notice, and that the non-permitting authority EPA review and veto role adds value to the permitting process only where there is a separate entity such as a delegated State functioning as the part 71 permitting authority.

3. Incorporation of New Standards

The process by which EPA proposes to incorporate into permits new MACT standards promulgated under section 112 would follow that contained and discussed in detail in the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994). This notice incorporates by reference the rationale for this process contained in the preamble to the proposed revisions to part 70. To the extent appropriate, EPA intends the final part 71 rule to be consistent with the part 70 rule as it is finally promulgated. For a more detailed discussion of this process for purposes of part 71, see section 3–F–3 of the Supplementary Information Document.

Note that under a delegated part 71 program, if EPA receives the initial notification because the MACT standard has not yet been delegated to the State, local or Tribal agency, EPA will send this notice to the delegate part 71 permitting authority, and upon receipt of this notice the permitting authority could begin processing the administrative amendment. Also, under delegated part 71 programs, where the NSR programs have been enhanced to meet part 71 requirements, minor and major NSR actions would be acceptable for addressing and establishing part 71 permit conditions needed to assure compliance with MACT standards. Thus, the merged preconstruction review process applying to NSR permits could also be used to revise the part 71 permit to incorporate the MACT requirements applicable to the source. If the NSR action were not merged (as would be the case if EPA had not delegated part 71 administration to a State or eligible Tribe), the part 71 revision would be eligible under the minor permit revision track, or, if it met the criteria, the de minimis permit revision track.

4. Permit Reopenings

Under proposed § 71.7(i), part 71 would follow the currently promulgated part 70 in providing when and how permits would be reopened. For a more detailed discussion of the part 71 permit reopening procedures, see section 3–F–4 of the Supplementary Information Document. Where EPA has delegated a part 71 program to a State or eligible Tribe, special provisions for EPA notification to the delegate agency that cause exists to reopen would apply. These procedures follow those in existing part 70 for notification to approved part 70 permitting authorities. Briefly, if EPA finds that cause exists to reopen a permit, it would notify the delegate agency and the source. The delegate agency would have 90 days after receipt of this notice to forward to EPA a proposed determination of termination, revision, or revocation and reissuance of the permit. The EPA could extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA could then review the proposed determination for 90 days. If the delegate agency fails to submit a determination or if EPA objects to the determination, EPA may terminate, revise, or revoke and reissue the permit after providing the source at least 30 days written notice and an opportunity

for comment and a hearing on EPA's proposed action.

G. Section 71.8—Affected State Review

Following the proposed revisions to part 70, proposed § 71.8 would implement section 505(a)(2) of the Act and require that the permitting authority provide notice to all affected States (as defined in proposed § 71.2) of each draft permit and addenda to permits that incorporate de minimis permit revisions. Under the proposed procedures for minor permit revisions, sources, rather than permitting authorities, would have the responsibility to provide notice to affected States for such changes. Affected States are those States whose air quality may be affected, and that are contiguous to, the State in which a part 71 permit, permit revision, or permit renewal is being proposed, or those within 50 miles of the source. Tribal areas or areas under the jurisdiction of a local air pollution control area may be considered affected States in some cases.

Affected States that receive notice pursuant to proposed § 71.8 could submit written recommendations and comments to the permitting authority. If the permitting authority refuses to accept the recommendations, the reasons for the refusal would have to be provided in writing to the affected State(s) that provided the recommendations or comments during the public or affected State review period.

H. Section 71.9—Permit Fees

1. Authority to Impose Fees

The EPA believes that title V provides EPA the authority to charge sources fees whenever EPA is required to administer a part 71 program. Section 502(b)(3)(C)(i) of the Act provides that if EPA determines that the fee provisions of a State's part 70 program do not meet the requirements of title V, or if EPA determines that a permitting authority is not adequately administering or enforcing its approved fee program, EPA may, in addition to taking any other action authorized under title V, collect reasonable fees from the sources that should be paying adequate fees pursuant to an approved part 70 fee program. Thus, EPA has the discretion to charge fees whenever a State fails to establish an approvable fee program or fails to implement its approved fee program, even if there are no other deficiencies in the State's operating permits program. Section 502(b)(3)(C)(i) also provides that fees charged by EPA shall be designed solely to cover EPA's costs of administering the provisions of the permits program promulgated by EPA.

2. Fee Calculation and Assessment

The fee schedule proposed in § 71.9 would establish a dollar per ton charge on actual emissions of each regulated pollutant (for fee calculation) that is emitted from a source.

Under the fee schedule in this proposal, the date of the initial fee submittal would be contingent upon several factors. If EPA withdraws approval of a part 70 program, initial part 71 fees would be due in accordance with a schedule based upon a source's primary SIC Code, as provided in proposed § 71.9(f)(1).

If EPA implements a part 71 program in an area that did not have a part 70 program in place, initial fee calculation work sheets and fees would be due at the same time the initial permit application is due, in accordance with the requirements of proposed § 71.5(b)(1).

Regardless of whether a part 70 program preceded a part 71 program, sources that become subject to the part 71 program after the part 71 program's effective date would be required to submit initial fee calculation work sheets and fees at the same time the initial permit application would be due, in accordance with the requirements of proposed § 71.5(b)(1).

Sources would be allowed to pay their initial annual fee in two installments. The first payment equalling one-third of the annual fee would have to be submitted along with the initial fee calculation worksheet. The balance would be due four months later, but in no event later than a year after the program's effective date.

As provided in proposed § 71.9(g), for sources that receive a part 71 permit as a result of an EPA veto of the State's proposed part 70 permit (as provided in proposed § 71.4(e)), the initial fee calculation work sheet and fees would be due 3 months after the date the part 71 permit is issued. Delaying the source's fee payment in this manner would provide the State an opportunity to issue a permit that satisfies EPA's objection, thereby relieving sources of the burden of paying both State and Federal permit fees. However, such sources would not be permitted to pay fees in installments because their obligation to pay fees arises after EPA has completed the permit issuance process.

For sources that commenced operation during the calendar year preceding the date on which a source's initial application is due, the initial fee calculation would be based on an estimate of the current calendar year's actual emissions. This estimated fee would be adjusted in the first annual emission report. In addition, sources that would be required to submit initial fee calculation work sheets and fees between January 1 and March 31, as required by either proposed § 71.9(f)(1) or § 71.9(g), would have the option of basing their initial fee calculation on an estimate of the preceding calendar year's actual emissions. This provision would provide sources with a means for meeting the initial fee submittal requirements if their initial fee submittal date does not provide for sufficient time to calculate the previous calendar year's actual emissions. This estimation would also have to be reconciled in the first annual emission report.

For purposes of subsequent annual emissions reporting and fee assessments, the date (month and day) on which the initial part 71 fee calculation work sheet and fees were due would be considered the ''anniversary date'' for that source. Each source would be required to submit an annual report of its actual emissions for the preceding calendar year by its anniversary date. However, to allow sources with anniversary dates between January 1 and March 31 the time needed to analyze the preceding calendar year's emissions data, the anniversary date for these sources would be April 1. The annual report would have to include a fee calculation work sheet and full payment.

As discussed above, sources that commenced operation during the preceding calendar year would base their initial fee calculation on an estimate of the current calendar year's actual emissions. When the permitting authority receives the first annual emissions report, the permitting authority would compare the estimate to the emissions report and would adjust the initial fee to reflect the annual emissions listed in the report. If an additional fee is required, payment would be due with the submittal of the annual emissions report. If the source has overpaid, the permitting authority would credit the source's account. Regardless of this adjustment procedure, the source would be required to pay its current emissions fee based on the actual emissions listed in the first annual emissions report.

Sources subject to proposed § 71.9(f)(1) or § 71.9(g) that have initial application and fee calculation work sheets due between January 1 and March 31 could opt to base their initial fee on an estimate of the past year's

actual emissions. The first annual emissions report for such sources would have to reconcile the emissions fee from the initial fee calculation. In addition to calculating the current emissions fee, the report would be required to include actual emissions data from the estimated year, and the source's account would have to be revised accordingly.

Section 502(b)(3)(C)(ii) requires that sources that fail to pay fees in a timely fashion shall be assessed interest at a rate equal to the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points and shall pay a penalty charge of 50 percent of the fee amount. Proposed § 71.9(l) would implement section 502(b)(3)(C)(ii) by providing that the penalty charge shall be due if the fee is not paid within 30 days of the payment due date or if sources that compute fees based on estimated annual emissions substantially underestimate these emissions.

Fee payments would be required to be in United States currency in the form of a money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U. S. Environmental Protection Agency. The EPA intends to develop additional guidance regarding remittance procedures as the Federal operating permits program is implemented.

3. Principles for Developing Fee Structure

The following principles were used to develop the proposed fee requirements:

a. *Fees Based on Average Annual Costs.* By means of the fee structure proposed in this rule, EPA intends to recover both direct and indirect costs for the various activities conducted to administer part 71 programs. Direct costs would include personnel benefits and salaries, travel, equipment costs, and contractor expenses. Indirect costs would be those resources, outside of direct program costs, used to manage, oversee and provide counsel to program offices. These would include costs such as those incurred by EPA's management, administrative, and policy staff. Indirect costs would also include overhead costs, such as utilities and rents.

The methodology proposed to be used for setting fees is to estimate the cost of implementing the part 71 program nationwide and to divide that cost by the estimated emissions that would be subject to the fee. The result is a fee expressed in dollars per ton/yr of pollutants emitted. A detailed discussion of the assumptions and calculations involved in determining fees is found in ''Federal Operating Permits Program Costs and Fee Analysis'' (Fee Analysis), which is contained in the docket for this rulemaking.

The cost estimates presented in the Fee Analysis are based on operating a part 71 program for two years. The EPA believes this is a reasonable average program duration, given the expected transitory nature of the program.

For purposes of the cost analysis, the hourly personnel costs were assumed to be the same for EPA and for delegate agencies. Therefore, the total personnel costs for an EPA administered program and one which is delegated in whole or in part would be identical except for the cost of additional EPA oversight (which would be covered by a $3 per ton/yr surcharge discussed below).

Because part 71 programs will generally be transitional programs, EPA may in some cases decide to staff the program primarily through contractor assistance. The emissions fee for a particular part 71 program would vary depending on the extent to which EPA relies on contractor support and the cost of contractor assistance. If the program is administered by EPA without contractor assistance, the proposed fee would be $45 per ton/yr. If the program were staffed through contractor assistance (except for those functions for which the use of contractors is not appropriate such as final permit issuance determinations), EPA would establish a fee based on the contractor costs for a particular program.

As provided in proposed § 71.9(c)(3), the fee for a contractor assisted program is the sum of the permitting authority's costs associated with activities that it undertakes, the cost of paying a contractor to undertake other activities, and a surcharge that covers EPA's oversight costs. The formula for determining the cost of contractor assistance is as follows:

C=[B+T+N] divided by 12,300,000

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents non-personnel data management and tracking costs.

B, T and N, when summed, are divided by the total tonnage of national emissions that would be subject to fees (12.3 million tons) to convert the cost into a per ton fee rate.

The Fee Analysis discusses the methodology used in computing the base cost of the part 71 program, travel costs and non-personnel data management and tracking costs. Travel costs and non-personnel data management and tracking costs would be the costs ($14,488,000 and $13,400,000 respectively) indicated in Table A–3 of that document.

As indicated above, the base cost would vary depending on the hourly rate paid for contractor assistance. Table A–3 presents the base cost for a program in which contractor assistance (costing $62 per hour) was used to the maximum extent possible. This $62 figure reflects the average hourly cost of several large contracts awarded by EPA for projects relating to air quality control. Using that hourly rate, the resulting per ton fee would be $77. The base cost was computed by summing the costs of contractor assistance for years 1 and 2 for the activities listed in Table A–1 of the Fee Analysis (except those activities which EPA should undertake, i.e., presiding over hearings, transition planning, guidance, contract management, and training) and then computing an annualized cost. To determine the fee for a particular part 71 program, EPA would substitute a different hourly rate (based on the actual rate charged by the contractor) into the computation.

Each time a part 71 program is implemented, EPA would determine the percentage of personnel time allocated to contractors by considering who could best perform each type of permitting activity (e.g., technical review and processing of permit applications and compliance plans, preparation for public hearings, compliance inspections). This flexibility would allow EPA to develop a staffing pattern that meets the unique needs of the part 71 program being administered. By using the formula specified in proposed § 71.9(c)(3), EPA would arrive at the basic emissions fee. If the program is delegated or staffed largely by contractors, there would be additional costs due to the oversight that EPA must provide to the program. These additional costs of EPA's review of permit applications, compliance plans, draft permits, permit revisions and reopenings would increase the emissions fee by $3 per ton/yr.

The EPA currently uses contractors for permits related work pursuant to competitively bid contracts which compensate contractors on a level of effort basis, using set hourly fees. These contracts, which provide for a certain number of hours of services at a fixed hourly rate, were used in projecting the costs of using contractors to implement part 71 programs and could be used by EPA for part 71 programs when contractor assistance is needed. It has been suggested that for part 71 programs

it may be more cost effective if contracts for part 71 programs were independently bid. Therefore, EPA solicits comments on whether fees for part 71 programs should be based on contractor costs established by a new competitive bid process. While not wanting to dismiss this alternative, the EPA is concerned about the costs involved with preparing the documentation required for the competitive bid process and that the length of time required to undertake this process (usually 12–18 months) would make this alternative impractical in light of the program's effective date. In particular, EPA solicits comments on whether this approach would result in cost savings.

The EPA considered several other options for setting fees. For example, EPA considered the possibility of basing fees for each part 71 program on the fee structure submitted by a State or local government as part of its part 70 submittal. This approach, however, has limited utility in that it is not appropriate where the submittal contains an inadequate fee program or where no submittal is made. Furthermore, the administrative burden (and the delay in program implementation) involved with completing individual rulemakings for each part 71 program made this option infeasible.

Given that it is not practical to craft a fee schedule that fits each State, and given that EPA is unable to foresee with certainty when and where it may be necessary to implement part 71 programs, EPA proposes to base its fees on the average cost of implementing a part 71 program.

The EPA considered whether the average cost of the part 71 program would be recovered by charging a fee of $25 per ton/yr (1989 baseline with CPI adjustments), which is the amount of fee revenue that EPA would presume is adequate for purposes of funding State operating permits programs under part 70. For fiscal year 1995, this fee would equal $30.18. However, EPA believes that there would be some differences in costs between the Federal program and State programs which made use of the presumptive fee inappropriate.

Using the approach outlined above, EPA has developed a proposed fee structure that will reflect the cost of the Federal operating permits program, though not necessarily the cost of implementing the program in any particular State. The proposed fee is expected to be adequate for nearly all part 71 programs and should, on average, collect sufficient revenue to fund permitting under this part. However, if EPA determines that the fee structure provided in proposed § 71.9(c)(1)–(4) does not adequately reflect the program costs for a particular area, such as a Tribal area, then EPA may by separate rulemaking establish a different fee for a part 71 program.

b. *Minimizing Administrative Burdens.* Although EPA could design a fee system that imposes different fees based on such factors as source categories, the particular pollutants emitted, or the type of permitting action requested, EPA proposes a straight forward emissions-based fee system. For sources, the fee computation would be simple. Similarly, EPA's administrative burden related to assessing fees and monitoring compliance with fee requirements would be minimized.

c. *Fees Calculated Based on Existing Information.* The EPA would provide sources with fee calculation work sheets. Using these work sheets, sources would compute their actual emissions of the appropriate pollutants and multiply by the appropriate per ton/yr rate. Sources would submit fees within the first 12 months of the effective date of the program, and annually thereafter. Many sources are already subject to annual emissions reporting requirements. Thus, except for new sources, there would generally be no requirement that sources develop any information for the work sheets that would not already be required on the application form or as an emission reporting requirement.

d. *Fees Imposed in Advance of EPA's Rendering Services.* Under the proposal, all part 71 sources would remit fees within 12 months of the effective date of the permit program, even if the source is not issued a part 71 permit within that time. Those fees will provide a stable source of revenue from which to fund the initial start-up costs of the program, the costs of issuing permits within the first year of the program, as well as cover ongoing activities such as inspections, reviewing monitoring reports, and other compliance and enforcement activities.

This procedure would comply with Federal policy for user fees established in OMB Circular A–25 (July 8, 1993), which provides that fees are to be collected before services are administered or goods provided to ensure that fees are actually paid for the services provided, that the Treasury receives funds in a timely manner, and that additional administrative burdens and costs for collecting fees are avoided.

4. Revision of Fee Structure

To reflect changes in operating costs, fees would be adjusted automatically every year (after 1997) by the same percentage as the percent change in the CPI. Also, the fee schedule would be revisited every two years as required by section 902(a)(8) of the Chief Financial Officer's Act of 1990. (31 U.S.C. 501 *et seq.*)

I. Section 71.10—Delegation of Part 71 Program

1. Delegation Process

Section 301(a)(1) of the Act provides that the Administrator is authorized to prescribe such regulations as are necessary to carry out his or her functions under the Act. Pursuant to this authority, proposed § 71.10 provides that a part 71 program may be delegated in whole or in part, with or without signature authority (i.e., the authority to issue permits) to any State or local agency or eligible Tribe that is found to have the requisite legal authority to administer such a program. For purposes of the rule, an eligible Indian Tribe would be a Tribe that EPA has determined meets the criteria for being treated in the same manner as a State, pursuant to regulations implementing section 301(d)(2) of the Act.

The EPA recognizes that in some cases States could fail to receive part 70 program approval due to program flaws that are not related to the permitting authority's practicable ability to implement a title V program. For example, the submitted part 70 program may contain elements in it enabling legislation or its regulations that prevent EPA from granting program approval, even though EPA may be confident that the State permitting authority could adequately administer and enforce a title V program that meets the requirements of the Act. While title V requires EPA to promulgate Federal title V programs for States that fail to receive part 70 program approval, EPA believes that in situations where State permitting authorities appear capable of implementing programs that meet the requirements of title V, it would be consistent with the general policies of the Act to involve States in implementing required Federal permits programs, rather than exclude State permitting authorities.

The Act has long provided that air pollution control is the primary responsibility of States and local governments. (See, e.g., section 101(a)(3) of the Act, 42 U.S.C. 7401(a)(3).) Moreover, while title V requires States to submit permit programs for approval by EPA, the Act does not provide that program approval is the sole mechanism available for State air pollution control

agencies to become permitting authorities under title V. Section 501(4) of the Act defines ''permitting authority'' to mean both the Administrator or the air pollution control agency ''authorized'' by the Administrator to carry out a permit program under title V. Section 302(b) of the Act defines ''air pollution control agency'' to include State and local government agencies. The EPA believes the word ''authorized'' as used in section 501(4) may reasonably be interpreted to apply not only to instances in which EPA approves a submitted part 70 program, but also to instances in which EPA determines that a State or local air pollution control agency demonstrates that it is capable of carrying out a title V permit program even where the State has not submitted a part 70 program that has received EPA approval.

The EPA could exercise its discretion to delegate authority to administer some portion or all of a part 71 program where, for example, it makes sense to take advantage of existing expertise of the delegate agency or where it seems probable that the delegate agency's submitted part 70 program will be approved within a short time by EPA, provided in both cases that the delegate agency has the authority to administer the portion of the program that would be delegated.

Any agency that seeks to obtain delegation of a part 71 program would be required to submit a formal request for delegation, in accordance with the provisions of proposed § 71.10, and such other documentation as is necessary for review and consideration by the Administrator to make a determination that the agency or eligible Tribe has adequate legal authority and procedures to administer and enforce a part 71 program.

The EPA would adopt a flexible approach in evaluating delegation requests. The EPA would not demand that each delegate agency administer a part 71 program in precisely the same way because each delegate agency would have to comply with its own procedures, administrative codes, regulations, and laws as well as the requirements of this part.

The Governor or designee for a State, a local agency, or the Tribal governing body for an eligible Tribe, would be required to submit to EPA a written request for delegation of authority on behalf of the State or local agency or eligible Tribe pursuant to proposed § 71.10. The request would have to include a legal opinion that certifies that the State or local agency or eligible Tribe has the requisite legal authority to implement and administer the program. The request would also have to identify the officers or agencies responsible for carrying out the State, local, or Tribal procedures, regulations, and laws.

The EPA would respond in writing to each delegation request and shall state to what extent the request has been accepted or rejected. If the request is accepted in whole or in part, the Administrator would delegate to the Governor or designee, the local agency, or Tribal governing body, the authority to carry out the accepted portions of the delegation. If the request is rejected in whole or in part, the notification shall specify the reasons for such rejection.

The terms and conditions of the delegation would be set forth in a ''delegation of authority agreement'' that specifies the effective date for the agreement. The delegation of authority agreement would be published in the **Federal Register** by EPA and would identify the delegate State, local, or Tribal procedures to be used for implementing and administering the program by reference to the request and to any additional submission by the Governor or designee, or Tribal governing body supplementing or modifying the State, local or Tribal procedures.

2. Full and Partial Delegation

Although EPA encourages delegate agencies to accept full delegation of all aspects of the administration of part 71 programs, there are situations where a delegate agency may be unable or unwilling to assume all responsibility for administering these programs. Where appropriate, EPA could choose to grant partial delegations as follows:

(1) Delegation of authority may be granted for only a portion of the State or regulatory area;

(2) Delegation of authority may be restricted to certain source categories or parts thereof; or

(3) Authority may be delegated for selected parts of the procedural responsibility in implementing a part 71 program with EPA acting as a partner in completing the remaining actions (e.g., delegation of authority may be granted with regard to the administrative and/or technical portion of implementing the part 71 program, with EPA providing enforcement should such action become necessary);

(4) Authority may be delegated for only the acid rain portion of a title V program, or for other parts of the title V program, not including the acid rain portion.

3. Procedural Requirements for Delegation

The delegate agency would be required to provide notice to the Administrator of all applications for any permit, permit renewal, or permit revision, including any compliance plan, or any portion thereof that the Administrator determines to be necessary to review the application and permit effectively, each proposed permit, and each final permit as provided in proposed § 71.10(d). The delegate agency would also have to provide notice of each draft permit to affected States on or before the time that the delegate agency provides this notice to the public under proposed §§ 71.7 (e)(4), (h), or (i) or § 71.11(d) and would be required to provide any affected State a copy of the addendum for a de minimis permit revision within 7 days of the date on which the addendum takes effect.

Affected States that receive notice pursuant to proposed § 71.8(a) could submit written recommendations and comments on the permit to the delegate agency. If the delegate agency refuses to accept the recommendations, the reasons for the refusal would have to be provided in writing to the State(s) providing the recommendations.

The EPA could waive its own and affected States' review of permits for any category of sources, except major sources, by nationwide regulation for a category of sources. The EPA could also waive its own right to review, but maintain the requirement for a delegate agency to notify affected States. During Phase II of the acid rain program, the Agency does not intend to waive its own right to review permits for affected sources under the acid rain program.

When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, the Administrator could object, in writing, to a part 71 permit if the delegate agency fails to properly submit, process, or provide notice as would be required by this part or if the part 71 permit does not assure compliance with applicable requirements of the Act. If the delegate agency fails to revise the proposed permit in response to the objection, the Administrator could deny the permit or issue a permit in accordance with the part 71 program.

4. Delegation of Authority Agreement

A delegation of authority agreement would specify the terms and conditions of the delegation and would be required to include, but not be limited to:

(1) A provision that the delegation is made in accordance with proposed § 71.10;

(2) A provision that describes the source categories, geographic areas, and the administrative and enforcement activities governed by the delegation;

(3) A provision that requires the delegate agency to comply with the public notice requirements of proposed §§ 71.7 and 71.11;

(4) A provision that requires the delegate agency to provide a copy, through the appropriate Regional Office, of each permit application, proposed permit, and final permit to the Administrator as required in proposed § 71.10(d);

(5) A provision that any permit issued by a delegate agency contain a statement identifying the permit as a title V, part 71 permit;

(6) A provision that requires EPA's concurrence on any applicability determination or policy statement regarding title V or parts 70 or 71 not covered by determinations or guidance provided to the delegate agency;

(7) A provision that requires immediate notification to be provided to EPA if the delegate agency is unable or unwilling to administer or enforce a provision of the delegated part 71 program with respect to any source; and

(8) A provision that the delegate agency may not grant any waiver to a permit requirement or issue any order that violates an effective provision or requirement of part 71 or the Act.

J. Section 71.11—Administrative Record, Public Participation, and Administrative Review

Section 71.11 of the proposal establishes procedures by which the part 71 permitting authority would act on permit applications, issue draft permits, provide opportunities for public comment, and issue final permits. The emphasis in proposed §§ 71.11(a)–(j) is on a description of the notice and public participation procedures for initial permit issuance, permit renewals, permit reopenings, and significant permit revisions. The notice and public participation procedures for administrative amendments, de minimis permit revisions, and minor permit revisions are described in proposed § 71.7.

Proposed §§ 71.11(k)–(m) describe the administrative record for permits, the procedure for appeal of permits, and the determination of the beginning and ending days for any scheduled time period. Unlike proposed §§ 71.11(a)–(j), provisions in proposed §§ 71.11(k)–(m) would apply to all permit actions, including administrative amendments, de minimis permit revisions, minor permit revisions and significant permit revisions.

The EPA considered two alternative methods of establishing the public participation and administrative review procedural requirements. The first alternative would be to amend the existing procedures in 40 CFR part 124, which establishes specific decision making procedures for RCRA, Underground Injection Control (UIC), PSD, and NPDES permits, so that the procedures would be compatible with the part 71 program. The EPA would then incorporate those provisions by reference into the part 71 permit rule. The second alternative was to establish public participation and administrative appeal procedures as a separate section of this rule. This alternative has the advantage of allowing these procedures to focus specifically on the needs of the part 71 program as well as appear in close proximity to the permit program requirements in the Code of Federal Regulations.

Today's proposal follows the second alternative. The proposed public participation and administrative appeals procedures are set out at § 71.11 and are based closely on selected provisions of part 124, subpart A. The EPA does not believe the choice of one format over the other will have a substantial impact on the implementation of this rule.

Once a permit application is complete, including an application to revise an existing permit, the permitting authority would tentatively decide whether to prepare a draft permit. Such draft permits would contain permit conditions specified in proposed § 71.6, public notice of the draft permit would be issued and the draft would be made available for comment. Administrative amendments of permits would not be subject to draft permit or public notice requirements. Public notice of de minimis permit revisions would be on a post hoc basis, and draft permits for minor permit revisions would be publicly noticed by the applicant source. All draft permits issued by the permitting authority would be accompanied by a statement that briefly describes the derivation of the conditions of the draft permit and the reasons for them.

Proposed § 71.11(d) would establish public notice and comment procedures for part 71 permit actions not addressed elsewhere in the proposal, including application denials, draft permit preparation, scheduling of public hearings, reopening of the public comment period, and granting of appeals. Where other provisions of this proposal establish permitting procedures for specific types of actions, such as in the provisions on administrative amendments, de minimis permit revisions, and minor permit revisions, those provisions would govern. Notice of draft permits under proposed § 71.11(d) (including permit revisions) would provide at least 30 days for public comment, and notices of hearings would be issued at least 30 days before hearings are held. Notice would be provided by mail to interested persons, by publication, or by other reasonable means and would include information on the permittee, contact persons, and general procedures on submitting comments and requesting to speak at hearings. In addition, notices of hearings would provide information on dates, times, and places of hearings, as well as applicable rules and procedures. The permitting authority could hold hearings either upon the basis of requests or on its own initiative.

Proposed § 71.11(e) would establish requirements for consideration of comments on a draft permit. It would require that a request for a public hearing be in writing and include a statement of the nature of the issues proposed to be raised at the hearing. It would also stipulate that all comments be considered in making the final decision on the draft permit, and that a publicly available record be kept of commenters and issues raised.

Proposed § 71.11(f) on public hearings would require that a public hearing be held if there was a significant degree of interest in a draft permit. The permitting authority would designate a Presiding Officer who would be responsible for conducting the hearing. This proposed procedure would allow statements from any person, with reasonable limits on time allowed for oral statements. A tape recording or written transcript would be required to be made available to the public.

Proposed § 71.11(g) would require that all reasonably ascertainable issues and all reasonably ascertainable arguments be raised or submitted by the close of the public comment period. It would require that supporting materials be submitted in full, rather than incorporated by reference. In order to comply with this proposed requirement, the comment period could be longer than 30 days, at the discretion of the permitting authority.

Proposed § 71.11(h) would allow the permitting authority to reopen the public comment period if any person believed that a condition of the draft permit is inappropriate, or that the permitting authority's decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate. If information submitted during the public comment period appeared to raise substantial new questions, the

permitting authority would have the flexibility to prepare a new draft permit, or prepare a revised statement of basis and reopen or extend the comment period.

Proposed § 71.11(i) would require the permitting authority to issue a final permit decision once the public comment period had closed. The final decision, which becomes effective immediately upon issuance of the decision or a later date specified in the decision, would be a decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

Proposed § 71.11(j) would require the permitting authority to issue a response to comments. The response would specify what provisions, if any, of the draft permit were changed in the final permit decision, and why. It would also require a description and response to all significant comments, and require inclusion of any cited documents in the administrative record. If an affected State recommended changes to the draft permit that were not accepted by the permitting authority, proposed § 71.11(j) would require written notification to the affected State.

Final permit decisions would be based on the administrative record defined in proposed § 71.11(k), including comments received, hearing transcripts, the response to comments, the final permit, the permit application, and the draft permit and its statement of basis.

Proposed § 71.11(l) grants a right of appeal of all final permit decisions, including those taken under provisions establishing procedures for administrative amendments, de minimis permit revisions, and minor permit revisions, and establishes procedures for such appeals. Within 30 days of a final permit decision, interested persons could petition the Environmental Appeals Board to review the final permit decision. Petitions for review would be required to include a statement of the reasons supporting review and could address only issues raised during the public comment period, unless it was impracticable to raise the relevant objections during such period or the grounds for objection arose after the period closed. An example of a situation in which it is impracticable to raise an objection during the comment period would be when a significant change is made from a draft to final permit without providing an opportunity for public comment. Moreover, while persons who participated in the comment or hearing processes could petition the Board to review any condition of the final permit decision, persons who failed to file comments or participate in hearings could petition the Board only with respect to changes from the draft to final permit decision. When a part 71 permit is appealed, it would nevertheless remain fully effective and enforceable against the permitted source.

The EPA seeks comment on its method of establishing procedures for public participation and administrative review, and on the appropriateness of the specific procedures proposed. The EPA particularly seeks comment on the issues of the statement of basis accompanying draft permits, the proposed public notice and comment requirements, and appeals of permits.

Pursuant to sections 114 and 503(e) of the Act, EPA, by this proposed rule solicits comments on the appropriateness of, and the means for, making available to the public information that a source would be required by this rule to collect. Such information might include, for example, the data resulting from use of required monitoring methods. Specifically, EPA is requesting comment on what types and amount of information required under this rule should be made available to the public, what limits, if any, to place on a requirement to make available such information, and appropriate methods for making such information publicly available (e.g., electronic reporting to a publicly accessible data base, direct access by the public to information held by sources, or reliance on EPA and/or delegated States to assist the public in obtaining the information). The EPA also solicits comment on appropriate language for a rule or policy guidance document to effectuate public availability of information required under this rule and solicits comments on whether a rule or a policy guidance document is more appropriate.

Under both delegated and nondelegated part 71 programs, interested persons (including permitees) would be authorized to petition the Administrator to reopen an already issued permit for cause as provided in proposed § 71.11(n). Petitions would be required to be in writing and to contain facts or reasons supporting the request. If the Administrator determined that cause exists to reopen the permit, he or she would revise, revoke and reissue, or terminate the permit consistent with the requirements and procedures in proposed § 71.7.

Under part 70, citizens can petition EPA to object to State issued permits and can appeal EPA's failure to object to a proposed permit. However, for both delegated and nondelegated part 71 programs, the EPA feels this type of petition process is unnecessary because the final permit can be appealed directly to the Environmental Appeals Board (EAB) and because citizens can use the petition process provided by proposed § 71.11(n) in cases where the deadline for appeal to the EAB has passed. The EPA believes that this approach provides an adequate opportunity for EPA oversight of part 71 programs, and that consequently there is little value in providing the opportunity for citizens to petition the Administrator to object to a proposed permit, which could result in two separate and simultaneous routes to appeal EPA's permitting actions. Moreover, the approach proposed today would be more consistent with that taken in the Agency's recently promulgated rule (to be codified at 40 CFR 71.21 *et seq*), which governs how title V specialty permits would be issued to sources seeking alternative hazardous air pollution emissions limits under section 112(i)(5) of the Act. See 59 FR 59921 (Nov. 21, 1994) (''Federal Operating Permit Programs; Permits for Early Reductions Sources''). The Agency solicits comment on this approach.

K. Section 71.12—Prohibited Acts

It is important to note that it is unnecessary to include an enforcement authority section in the part 71 Federal program regulations that specifically corresponds to the enforcement authority section in the part 70 State program regulations. Rather, because the program under part 71 is a Federal program, it will be enforced through the full Federal enforcement authorities in the Act.

Examples of the Federal enforcement authorities available under the Act for violations of title V and the regulations thereunder include, but are not limited to, the authority to: (1) Restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of the Act that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; (2) seek injunctive relief in court to enjoin any violation of the Act; (3) issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day for each violation of the Act; and (4) assess and recover a civil penalty of not more than $25,000 per day for each violation of the Act. Another example of enforcement authority available under the Act is the authority to assess criminal fines pursuant to title 18 of the United States Code or imprisonment for not to exceed 5 years, or both, against any person who knowingly violates title V and the

regulations thereunder. The above list is not an exhaustive description of the Federal enforcement authority available under the Act for violations of title V and the regulations thereunder. Accordingly, nothing in this discussion shall be construed to limit the Federal enforcement authorities available under the Act for violations of title V and the regulations thereunder.

The Federal enforcement authority available under the Act for violations of title V and the regulations thereunder provides broader enforcement authority than the States are required to have under the part 70 regulations. For example, 40 CFR 70.11 requires that States have authority to recover civil penalties for a maximum amount of not less than $10,000 per day per violation. The Federal enforcement authority imposes a maximum penalty of up to $25,000 per day per violation.

VI. Administrative Requirements

A. Reference Documents

All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in Docket No. A–93–51.

B. Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligations of recipients thereof;

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant'' regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The estimated annualized cost of implementing the part 71 program is $137.5 million to the Federal government and $79.8 million to respondents, for a total of $217.3 million which reflects industry's total expected costs of complying with the program. Since any costs incurred by the Agency in administering a program would be recaptured through fees imposed on sources, the true cost to the Federal government is zero. The requirements for the costs result from section 502(d) of title V which mandates that EPA develop a Federal operating permits program. The proposed program is designed to improve air quality by: indirectly improving the quality of State-administered operating permits programs; encouraging the adoption of lower cost control strategies based on economic incentive approaches; improving the effectiveness of enforcement and oversight of source compliance; facilitating the implementation of other titles of the Act, such as title I; and improving the quality of emissions data and other source-related data.

C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). The EPA has established guidelines which require an RFA if the proposed rule will have any economic impact, however small, on any small entities that are subject to the rule, even though the Agency may not be legally required to develop such an analysis.

The original part 70 rule and the recently proposed revisions to part 70 were determined to not have a significant and disproportionate adverse impact on small entities. Similarly, a regulatory flexibility screening analysis of the impacts of the proposed part 71 rule revealed that the proposed rule would not have a significant and disproportionate adverse impact on small entities; few small entities would be subject to part 71 permitting requirements because the proposed rule defers permitting requirements for nonmajor sources. Consequently, the Administrator certifies that the proposed part 71 regulations will not have a significant and disproportionate impact on small entities. The EPA, however, solicits any information or data which might affect this proposed certification. The EPA will reexamine this issue and perform any subsequent analysis deemed necessary. Any subsequent analysis will be available in the docket and taken into account before promulgation.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., Washington, D.C. 20460, (202) 382–2706.

As compared to the burden imposed by 40 CFR part 70, the average additional annual burden on sources for the collection of information is approximately 3.3 million hours, or on average approximately 96 hours per respondent and none for State and local agencies. The total annualized cost for collection is estimated to be approximately $79.8 million for sources. There is no burden for State and local agencies. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM–223) U.S. Environmental Agency, 401 M St. SW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked, ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Unfunded Mandates Reform Act

As shown in the Information Collection Request Document (ICR), today's action imposes no costs on State, local and tribal governments. The EPA estimates that the direct cost to the private sector would be no more than $96.6 million in any one year. and above costs industry would have incurred by complying with State permits programs mandated by the Act, for which part 71 programs are substitutes. For EPA's estimates of the cost to industry and permitting agencies for State permits programs, see 57 FR 32293 (July 21, 1992) and 59 FR 44525 (August 29, 1994). As shown in the ICR for proposed part 71, the part 71

program would impose on industry a marginal cost (i.e., a cost above what industry would incur to comply with State requirements) of $31.9 million for collecting information (e.g., completing permit applications). Additionally, EPA has calculated the marginal cost to industry of the part 71 fee structure to be $64.7 million. As shown in the ICR, part 71 programs would generate $137.5 million in fees, using an average fee of nearly $60 per ton of certain regulated pollutants. On the other hand, most States are expected to charge approximately $31 per ton (or $25 per ton as adjusted for inflation using a baseline year of 1989) which is the fee amount which title V of the Act suggests would be adequate to fund a State permit program. The difference between fees generated under part 71 and under the otherwise applicable State fee requirements (based on $31 per ton) would be $64.7 million. In addition, it is important to note that the estimates used in these projections (and the ICR) are based on the assumption that EPA would administer 10 part 71 programs for a full year. The EPA believes that it is very unlikely that it would administer that many programs for such an extended time period. For these reasons, EPA believes that the total marginal costs to industry under today's proposal would not exceed $100 million in any one year. Therefore, the Agency concludes that it is not required by Section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this proposed regulatory action because promulgation of the rule would not result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100,000,000 or more in any one year.

List of Subjects

40 CFR Part 55

Air pollution control, Outer Continental Shelf, operating permits.

40 CFR Part 71

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits, Indian Tribes, Air pollution control—Tribal authority.

Dated: March 28, 1995.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

(**Note:** Material enclosed by brackets and designated as ''Option'' set forth an alternative proposal regarding revision of permit terms that prescribe monitoring or recordkeeping procedures. Material enclosed by brackets and designated as ''alternatives'' set for an alternative proposal regarding processing changes under the administrative amendment procedures and de minimis permit revision procedures.)

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.6 is proposed to be amended by adding paragraph (c)(3) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(c) * * *

(3) If the COA does not have an operating permits program approved pursuant to 40 CFR part 70 or if EPA has determined that the COA is not adequately implementing an approved program, the applicable requirements of 40 CFR part 71, the Federal operating permits program, shall apply to the OCS sources. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator. The Administrator may delegate the authority to implement and enforce all or part of a Federal operating permits program to a State pursuant to § 55.11.

* * * * *

3. Section 55.10 is proposed to be amended by revising paragraph (a)(1) and by adding paragraph (b) to read as follows:

§ 55.10 Fees.

(a) * * *

(1) EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

* * * * *

(b) OCS sources located beyond 25 miles of States' seaward boundaries. EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

4. Section 55.13 is proposed to be amended by adding paragraph (f) to read as follows:

§ 55.13 Federal requirements that apply to OCS sources.

* * * * *

(f) 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of States' seaward boundaries if the requirements of 40 CFR part 71 are in effect in the COA.

(2) Located beyond 25 miles of States' seaward boundaries.

(3) When an operating permits program approved pursuant to 40 CFR part 70 is in effect in the COA and a Federal operating permit is issued to satisfy an EPA objection pursuant to 40 CFR 71.4(e).

* * * * *

PART 71—[AMENDED]

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

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

6. Part 71 is proposed to be amended by adding subpart A to read as follows:

Subpart A—Operating Permits

Sec.
71.1 Program overview.
71.2 Definitions.
71.3 Sources subject to permitting requirements.
71.4 Program implementation.
71.5 Permit applications.
71.6 Permit content.
71.7 Permit review, issuance, renewal, reopenings, and revisions.
71.8 Affected State review.
71.9 Permit fees.
71.10 Delegation of part 71 program.
71.11 Administrative record, public participation, and administrative review.
71.12 Prohibited acts.

Subpart A—Operating Permits

§ 71.1 Program overview.

(a) This part sets forth the comprehensive Federal air quality operating permits permitting program consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401 *et seq.*) and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V of the Act and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

(c) The requirements of this part, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or as modified by title IV of the Act and 40 CFR parts 72 through 78.

(d) Issuance of permits under this part may be coordinated with issuance of permits under the Resource

Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) and under the Clean Water Act (33 U.S.C. 1251 *et seq.*), whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e) Nothing in this part shall prevent a State from administering an operating permits program and establishing more stringent requirements not inconsistent with the Act.

§ 71.2 Definitions.

The following definitions apply to part 71. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

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

Administrator or *EPA* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Affected source shall have the meaning given to it in 40 CFR 72.2.

Affected States are:

(1) All States and Tribal areas whose air quality may be affected and that are contiguous to the State or Tribal area in which the permit, permit revision or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has determined that the Tribe is eligible to be treated in the same manner as a State.

(2) The State or Tribal area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(4) Except as provided in paragraph (3) of this definition, the term ''affected State'' does not include any local agency, district, or interstate program.

Affected unit shall have the meaning given to it in 40 CFR 72.2.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any requirement enforceable by the Administrator and by citizens under the Act that limits emissions for the purposes of creating offset credits or for complying with or avoiding the applicability of applicable requirements;

(3) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(4) Any standard or other requirement under section 111 of the Act, including section 111(d);

(5) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(6) Any standard or other requirement of the acid rain program under title IV of the Act or 40 CFR parts 72 through 78;

(7) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(10) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(12) Any standard or other requirement of the regulations promulgated at 40 CFR part 82, subpart B and subpart F to protect stratospheric ozone under sections 608 or 609 of title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a permit issued under title V of the Act, and any standard or other requirement under any other section(s) of title VI of the Act that the Administrator determines should be contained in a permit issued under title V of the Act; and

(13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Delegate agency means the State air pollution control agency, local agency, other State agency, Tribal agency, or other agency authorized by the Administrator pursuant to § 71.10 to carry out all or part of a permit program under part 71.

Designated representative shall have the meaning given to it in 40 CFR 72.2.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 71.7 or § 71.11 and affected State review under § 71.8.

Eligible Indian tribe or *Eligible tribe* means a tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.[1]

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term ''unit'' for purposes of title IV of the Act.

Federal Indian reservation, Indian reservation or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final action or *final permit action* means the issuance or denial of a part 71 permit, permit renewal, or permit revision by the permitting authority, which has completed all review procedures required by §§ 71.7, 71.8, and 71.11, and is subject to administrative appeal and judicial review.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 71 permit that meets the requirements of § 71.6(d).

Indian tribe or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Insignificant activity or emissions means those activities, operations, and

[1] Proposed rule entitled ''Indian Tribes: Air Quality Planning and Management'', 59 FR 43956 (August 25, 1994).

emissions levels which meet the criteria listed in § 71.5(g) for exemption from the documentation and reporting requirements of § 71.5(f).

Major new source review (major NSR) means a title I program contained in an EPA-approved or promulgated implementation plan for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under EPA regulations implementing parts C or D of title I of the Act. (40 CFR 51.165 through 51.166, 40 CFR part 51, subpart P, 40 CFR 52.21 through 52.29).

Major source means any stationary source or group of stationary sources as described in paragraph (1), (2), or (3) of this definition. For purposes of paragraphs (2) and (3) of this definition, major stationary source includes any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping. For the purposes of defining ''major source'' in paragraph (2) or (3) of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. In addition, for purposes of paragraphs (2) and (3) of this definition, any facility that supports a source, where both are under the control of the same person (or persons under common control) and on contiguous or adjacent properties, shall be considered a support facility and part of the same source, regardless of the 2-digit code of that facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least 50 percent of the output of the support facility is dedicated to the source.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant (HAP) (including any fugitive emissions of such pollutant) which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such HAP (including any fugitive emissions of such pollutants), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, ''major source'' shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant (including any fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act or for the purposes of paragraph (3) of this definition, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated as of August 7, 1980, under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more in areas classified as ''serious,'' 25 tpy or more in areas classified as ''severe,'' and 10 tpy or more in areas classified as ''extreme;'' except that the references in this paragraph (3)(i) to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182 (f)(1) or (f)(2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas: That are classified as ''serious,'' and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as ''serious,'' sources with the potential to emit 70 tpy or more of PM–10 or, where applicable, a PM–10 precursor.

Minor new source review (minor NSR) means a title I program approved by EPA into a State's implementation plan under EPA regulations implementing section 110(a)(2) of title I of the Act for the preconstruction review of changes which are subject to review as new or modified sources (40 CFR 51.160 through 51.164) and which do not qualify as new major stationary sources or major modifications under EPA regulations implementing part C or D of title I of the Act (40 CFR 51.165 through 51.166, 40 CFR part 51, subpart P, 40 CFR 52.21 through 52.29).

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or *State program* means an operating permits program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70.

Part 71 permit or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in § 71.3(a) and § 71.3(b).

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b) of this part.

Permit revision means any administrative permit amendment, de minimis permit revision, minor permit revision, or significant permit revision.

Permitting authority means one of the following:

(1) The Administrator, in the case of EPA-implemented programs;

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency with a part 70 program.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator and by citizens under the Act. This term does not alter or affect the use of this term for any other purposes under the Act, or the term ''capacity factor'' as used in title IV of the Act or 40 CFR parts 72 through 78.

Proposed permit means the version of a permit that the delegate agency proposes to issue and forwards to the Administrator for review in compliance with § 71.10(d).

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 of the Act or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for fee calculation), which is used only for purposes of § 71.9(c), means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following: (1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative for all actions, standards, requirements, or prohibitions under title IV of the Act or 40 CFR parts 72 through 78; or

(ii) The designated representative or a person meeting the provisions of paragraph (1), (2), or (3) of this definition for any other purposes under part 71.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term ''State'' also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands. Where such meaning is clear from the context, ''State'' shall have its conventional meaning. For purposes of the acid rain program, the term ''State'' shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Title I modification or *modification under any provision of title I of the Act* means any modification under part C or part D of title I or sections 110(a)(2), 111(a)(4), 112(a)(5), or 112(g) of the Act; under regulations codified in this chapter to implement sections 112(a)(5) and 112(g) of the Act or in 40 CFR 51.160 through 51.164, 40 CFR part 60, or in 40 CFR 61.07; or under State regulations approved by EPA to meet such requirements.

Tribal area means, for the purposes of the regulations under this part, those lands over which an Indian Tribe has authority under the Clean Air Act to regulate air quality. These lands include all areas within the exterior boundaries of an Indian reservation and any other areas outside reservation boundaries that EPA determines to be within a Tribe's inherent authority.

§ 71.3 Sources subject to permitting requirements.

(a) *Part 71 sources.* The following sources are subject to the permitting requirements under this part:

(1) Any major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential to emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the Act and is not otherwise required to obtain a permit under this part;

(2) Any source, including an area source (i.e., a nonmajor source), subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source (i.e., a nonmajor source), subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any source required to have a permit under part C or D of title I of the Act;

(5) Any affected source; and

(6) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.*

(1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) Nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 shall be exempted from the obligation to obtain a part 71 permit if the Administrator exempts such sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section that is exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by November 15, 1995, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond November 15, 1995. The effective date of such a part 71 program is November 15, 1995.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or November 15, 1995, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or November 15, 1995, whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) *Part 71 programs for Tribal areas.* The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or interim approval by the Administrator by November 15, 1995.

(1) Determining the boundaries of a Tribal area. At least 90 days prior to the effective date of a part 71 program for a Tribal area, the Administrator shall notify all appropriate governmental entities of the proposed geographic boundaries of the program.

(i) For programs solely addressing air resources within the exterior boundaries of the Reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the Reservation. For programs also addressing off-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the Tribe's assertions of jurisdiction over such off-reservation area(s), including:

(A) A map or legal description of the off-reservation area(s) over which the Tribe asserts jurisdiction.

(B) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of jurisdiction which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of jurisdiction over the off-reservation area(s).

(ii) The appropriate governmental entities shall have 15 days to provide written comments to the Administrator regarding any dispute concerning the boundary of the Reservation. Where a Tribe has asserted jurisdiction over off-reservation areas, appropriate governmental entities may request a single 15-day extension to the general 15-day comment period.

(iii) In all cases, comments must be timely, limited to the scope of the Tribe's jurisdictional assertion, and clearly explain the substance, bases and extent of any objections. If a Tribe's assertion is subject to a conflicting claim, the EPA may request additional information and may consult with the Department of the Interior.

(iv) The Administrator shall promptly decide the scope of the Tribe's jurisdiction. If a conflicting claim cannot be promptly resolved, the Administrator shall implement a part 71 program encompassing all undisputed areas.

(v) The part 71 program will extend to all areas within the exterior boundaries of the Tribe's reservation, as determined by the Administrator, and any other areas the Administrator has determined to be within the Tribe's jurisdiction.

(vi) The Administrator's determination of the scope of the Tribe's jurisdiction shall be published in the **Federal Register** at least 30 days prior to the effective date of the part 71 program.

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within two years of the

effective date of the part 71 program for the Tribal area, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

(c) *Part 71 programs imposed due to inadequate implementation.*

(1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph (c) shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) *Part 71 programs for OCS sources.*

(1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) shall apply on [Effective date of the final regulations].

(3) The requirements of § 71.4(d)(1)(ii) apply upon the effective date of a part 71 program for the corresponding onshore area.

(e) *Part 71 program for permits issued to satisfy an EPA objection.* Using the procedures of this part and 40 CFR 70.8 (c) or (d), or 40 CFR 70.7(g) (4) or (5) (i) and (ii), as appropriate, the Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and § 70.8 (c) and (d) of this chapter;

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, revise, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of this paragraph (e) shall apply on [Effective date of the final regulations].

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt through rulemaking portions of a State or Tribal program in combination with provisions of this part to administer a Federal program for the State or Tribal area in substitution of or addition to the Federal program otherwise required by this part.

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program as set forth in § 71.4 (a), (b), (c), or (d)(1)(ii). The promulgation of this part serves as the notice for the part 71 permit programs described in § 71.4(d)(1) (i) and (e). The EPA will also publish a notice in the **Federal Register** of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10. In addition to notices published in the **Federal Register** under this paragraph (g), the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) *Effect of limited deficiencies in State or Tribal programs.* The Administrator may administer and enforce a part 71 program in a State or Tribal area even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permit issuance.* If a full or partial part 71 program becomes effective in a State or Tribal area prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and 40 CFR parts 72 through 78.

(j) *Delegation of part 71 programs.* The Administrator may promulgate a part 71 program in a State or Tribal area and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10; however, delegation of a part of a program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the notice referred to in paragraph (g) of this section will define the respective roles of the State or eligible Tribe and the

Administrator in administering and enforcing the part 71 operating permits program.

(k) *EPA administration and enforcement of part 70 permits.* When the Administrator administers and enforces a part 71 program after a determination and notice under § 70.10(b)(1) of this chapter that a State or Tribe is not adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9.

(l) *Transition to approved part 70 program.* The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that fully meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(n), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(3) The Administrator shall rescind the part 71 permit for a source when it is replaced by a part 70 permit issued under the approved part 70 program.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112(g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

§ 71.5 Permit applications.

(a) *Duty to apply.* The owner or operator of a source required to obtain a permit under § 71.3 shall submit a timely and complete permit application in accordance with this section.

(b) *Timely application.*

(1) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months or an earlier date after the source becomes subject to the part 71 program. Sources required to submit applications earlier than 12 months will be notified in advance by the permitting authority of this paragraph (b)(1) and given a reasonable time to submit their applications. In no case will this notice be given less than 120 days in advance of the submittal date.

(2) For purposes of changes eligible under § 71.6(q), a timely application is one that is submitted not later than 6 months after the notice required under § 71.6(q)(3).

(3) For purposes of permit revisions other than changes eligible under § 71.6(g), a timely application is one that is submitted by the relevant deadlines set forth in § 71.7(e), (f), (g), or (h).

(4) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but no longer than 18 months prior to the date of the part 70 or part 71 permit expiration.

(5) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides or by such other deadlines established under title IV of the Act and 40 CFR parts 72 through 78.

(c) *Complete application.* To be found complete, an application must provide all information required pursuant to paragraph (f) of this section sufficient to allow the permitting authority to begin processing the application, except that an application for a permit revision need supply such information only if it is related to the proposed change. Additionally, an initial applicant must remit payment of any fees owed pursuant to § 71.9 in order for the application to be found complete. The information supplied by the applicant pursuant to paragraph (f) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with paragraph (i) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.7(a)(3). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the

permitting authority may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(d) *Confidential information.* In a case where a source submits information to the permitting authority under a business confidentiality claim, the permitting authority will follow procedures found at 40 CFR part 2. Pursuant to § 2.301(e) of this chapter, information contained in the permit application regarding emissions data or a standard or limitation is not entitled to confidential treatment.

(e) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(f) *Standard application form.* Part 71 sources shall submit the following information using application forms provided by the permitting authority (or if provided by the permitting authority, an electronic reporting method). Information as described in this paragraph (f) for each emissions unit at a part 71 source shall be included in the application. A complete part 71 permit application shall include the following elements:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone numbers and names of plant site managers/contacts.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under paragraph (g) of this section. Fugitive emissions shall be included in the permit application in the same manner as stack emissions for each emissions unit, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. Moreover, information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9 must be provided.

(ii) Identification and description of all points of emissions described in paragraph (f)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such additional terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities, including brief descriptions of any appropriate operation and maintenance procedures and quality assurance procedures.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the part 71 source.

(vii) Other information required by any applicable requirement (including, but not limited to, stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (f)(3)(i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(8) or to define permit terms and conditions implementing § 71.6(a)(9) or § 71.6(p).

(8) Identification of those emissions units eligible for emissions trading under § 71.6(a)(9) and those emissions units at which changes may be processed under de minimis permit revision procedures contained in § 71.7(f).

(9) A compliance plan for all part 71 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance

with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports every 6 months for sources required to have a schedule of compliance to remedy a violation, unless more frequent submittals are required in the applicable requirement or by the permitting authority.

(v) For affected sources applying for part 71 permits, the compliance plan content requirements specified in this paragraph (f)(9) must be met for all applicable requirements, including the applicable requirements of title IV of the Act. For permit applications required under the acid rain program, the compliance plan content requirements of 40 CFR part 72, subpart D must be met.

(10) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (i) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for annual submissions of compliance certifications during the permit term, or for more frequent submissions if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(11) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by 40 CFR part 72.

(12) Temporary sources requesting a single permit for multiple sites must also provide in the permit application ambient air quality standard and increment and visibility analyses as required under part C of title I of the Act.

(g) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels are exempt from the requirements of paragraph (f) of this section. Notwithstanding the preceding sentence, no activity or emission levels shall be exempt from the requirements of paragraph (f) of this section if the information omitted from the application is needed to determine the applicability of or to impose any applicable requirement, to determine whether a source is major, to determine whether a source is subject to the requirement to obtain a part 71 permit, or to calculate the fee amount required under the schedule established pursuant to § 71.9.

(1) *Insignificant activities.* Information concerning the following activities need not be provided in the application:

(i) Mobile sources;

(ii) Air-conditioning units used for human comfort that do not use a class I or class II ozone depleting substance and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(iii) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(iv) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(v) Noncommercial food preparation;

(vi) Consumer use of office equipment and products;

(vii) Janitorial services and consumer use of janitorial products; and

(viii) Internal combustion engines used for landscaping purposes.

(2) *Insignificant emissions levels.* Emissions meeting the criteria in paragraph (g)(2)(i) or (g)(2)(ii) of this section need not be included in the application consistent with paragraph (f) of this section, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(i) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 1 tpy, except in extreme ozone nonattainment areas, where potential to emit may not exceed 1,000 pounds (lb) per year. Aggregate emissions of any regulated air pollutant, excluding HAP, from all emission units shall not exceed potential to emit of 10 tpy, except in extreme ozone nonattainment areas, where potential to emit may not exceed 5 tpy.

(ii) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less. Aggregate emissions of all HAP from all emission units shall not exceed potential to emit of 5 tpy or the de minimis levels established under section 112(g) of the Act, whichever is less.

(h) *Application for coverage under a general permit.* Part 71 sources that qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with this section. The permitting authority may provide for applications for general permits which deviate from the requirements of this section, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and assure compliance with, the general permit.

(i) *Certification by a responsible official.* Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 79, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant permit revision process, and the permitting authority elects to use such process, any

permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(iv) *Emission units and part 71 sources.*

(A) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(B) For any nonmajor source subject to the part 71 program, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that caused the source to be subject to the part 71 program.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years. The permit shall state when the source's application for renewal must be submitted to the permitting authority consistent with § 71.5.

(3) For affected sources, a permit condition prohibiting any affected unit from emitting sulfur dioxide in excess of any allowances that the affected unit lawfully holds under title IV of the Act or 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the unit. The unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(4) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.

(5) Provisions stating the following:

(i) The source must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) *Need to halt or reduce activity not a defense.* It shall not be a defense for a source in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the source for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit, including copies of records required to be kept by the permit. The source may assert a claim of confidentiality consistent with section 114(c) of the Act and 40 CFR part 2 with respect to any such requested information.

(vi) A schedule of compliance does not sanction noncompliance with the applicable requirement on which it is based.

(6) A provision to ensure that a part 71 source pays fees to the permitting authority consistent with the fee schedule in § 71.9.

(7) *Emissions trading.* A provision stating that no permit revision shall be required under any economic incentives, marketable permits, emissions trading or other similar programs or processes approved in an implementation plan or other applicable requirement authorizing such changes to be provided for in the permit and where the permit provides for such changes.

(8) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating. Provided that each of the alternative scenarios available for a particular unit is monitored in a way that yields objective, contemporaneous measurement and recordation of relevant emissions or parameters and that the means of measurement are sufficiently different for each of the scenarios that the contemporaneous record reveals the scenario under which the source was operating when the record was made, no further notice to the permitting authority is required. Otherwise, the permit shall require that when any change is made between alternative scenarios, the permittee at the beginning of the following week shall place in regular mail to the permitting authority notice of such change(s) between scenarios, which could consist of a copy of the relevant portion of the on-site log indicating the scenario(s) under which the source operated during the previous week;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of any emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to ensure compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and the requirements of this part.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, shall be enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain testing, monitoring, reporting, recordkeeping and compliance certification requirements sufficient to assure compliance with the terms and conditions of the permit consistent with the following provisions of this section. Any document (including reports) required to be submitted by a part 71 permit shall contain a certification by a

responsible official that meets the requirements of § 71.5(i).

(d) *Monitoring requirements.* Each permit shall contain the following requirements with respect to monitoring:

(1) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (f) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (d)(2); and

(3) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(e) *Recordkeeping requirements.* Each permit shall contain the following requirements with respect to recordkeeping:

(1) All applicable recordkeeping requirements;

(2) Where applicable, a requirement to maintain records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses; and

(vi) The operating conditions as existing at the time of sampling or measurement; and

(3) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(f) *Reporting and notification requirements.* Each permit shall contain the following requirements with respect to reporting and notification:

(1) All applicable reporting requirements.

(2) Submittal of reports of any required monitoring at least every 6 months or more frequently if required by the applicable requirement or by the permitting authority. All instance of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(i).

(3) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(i) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made with 24 hours of the occurrence.

(ii) For emissions of any regulated air pollutant, excluding those listed in paragraph (f)(3)(i) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(iii) A permit may contain a more stringent reporting requirement than required by paragraphs (f)(3)(i) and (ii) of this section.

(A) If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (f)(3)(i) through (iii) of this section. A written notice, certified consistent with § 71.5(i), must be submitted within 10 working days of the occurrence.

(B) All deviations reported under paragraph (f)(3) of this section must also be identified in the 6 month report required under paragraph (f)(2) of this section.

(4) For purposes of paragraph (f)(3) of this section, deviation means any condition determined by observation, data from an enhanced monitoring protocol, any other monitoring protocol, or any other monitoring which is required by the permit that can be used to determine compliance, that identifies that an emission unit subject to a part 71 permit term or condition has failed to meet an applicable emission limitation or standard or that a work practice was not complied with or completed. For a condition lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(i) A condition where emissions exceed an emission limitation or standard;

(ii) A condition where process or control device parameter values demonstrate that an emission limitation or standard has not been met;

(iii) Any other condition in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.

(g) *Compliance certification requirements.* Each permit shall contain the following requirements with respect to compliance certifications with the terms and conditions contained in the permit, including emission limitations, standards, or work practices:

(1) The frequency (not less than annually or more frequently if specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(2) In accordance with paragraph (d) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) A requirement that the compliance certification includes the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (d) of this section;

(v) Such other facts as the permitting authority may require to determine the compliance status of the source; and

(vi) A requirement that all compliance certifications be submitted to the permitting authority.

(4) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(h) *Inspection and entry requirements.* Each permit shall contain inspection and entry requirements that require that,

upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(1) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(i) *Compliance schedule.* Each permit shall contain a schedule of compliance consistent with § 71.5(f)(9).

(j) *Progress reports.* Each permit shall contain a requirement that the permittee submit progress reports consistent with an applicable schedule of compliance and § 71.5(f)(9) to be submitted at least semiannually, or more frequently if required by the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(k) *Other provisions.* Each permit shall contain such other provisions as the permitting authority may require.

(l) *General permits.*

(1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 71 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the terms and conditions of the general permit. Notwithstanding the shield provisions of paragraph (n) of this section, the source shall be subject to enforcement action for operation without a part 71 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act (40 CFR part 72).

(2) Without repeating the public participation procedures required under § 71.11, the permitting authority may grant a source's request for authorization to operate under a general permit, and such a grant shall be a final permit action for purposes of judicial review.

(3) The permitting authority shall provide timely notice to the public of any authorization given to a source to operate under the terms of a general permit. Such notice may be made on a monthly, summarized basis covering all sources receiving authorization since the time of the last notice.

(m) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall contain all of the terms and conditions required by this section as well as the following terms and conditions:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(n) *Permit shield.*

(1) Except as provided in this part, the permitting authority may expressly include in a part 71 permit a provision stating that compliance with the terms and conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 71 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph (n) or in any part 71 permit shall alter or affect the following:

(i) The provisions of sections 112(r)(9) and 303 of the Act (emergency orders), including the authority of the Administrator under those sections;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(o) *Emergency provision.*

(1) *Definition.* An ''emergency'' means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (o)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (f)(3) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the

occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(p) *Operational flexibility.* A permitted facility may make changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the facility provides the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days. The source and the permitting authority shall attach each such notice to their copy of the relevant permit.

(1) *Trading under permitted emissions cap.* The permitting authority shall include in a permit an emissions cap, pursuant to a request submitted by the applicant, consistent with any specific emission limits or restrictions otherwise required in the permit by any applicable requirements, and permit terms and conditions for emissions trading solely for the purposes of complying with that cap, provided that the permitting authority finds that the request contains adequate terms and conditions, including all terms required under § 71.6, to determine compliance with the cap and with any emissions trading provisions. The permit shall also contain terms and conditions to assure compliance with all applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable. Any permit terms and conditions establishing such a cap or allowing such trading may be established or changed only in a full permit issuance, renewal, or significant permit revision procedures. The permitting authority shall not be required to include in the cap or emissions trading provisions any emissions unit where the permitting authority determines that the emissions are not quantifiable or where it determines that there are no replicable procedures or practical means to enforce the emissions trades.

(i) Under this paragraph (p)(1) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield described in § 71.6(n) may extend to terms and conditions that allow such increases and decreases in emissions.

(2) *Trading under the implementation plan.* Permitted sources may trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in paragraph (p) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading provided the permit identifies which permit terms may be replaced with the emission trading provisions in the implementation plan.

(i) Under paragraph (p)(2) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(ii) The permit shield described in § 71.6(n) shall not extend to any change made under paragraph (p) of this section. Compliance with the permit terms that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(q) The permitting authority may allow permittees, without first applying for a permit revision, to make changes that do not result in the source being in violation of any permit term or condition but render the source subject to an applicable requirement to which the source was not previously subject, provided the requirements of paragraphs (q)(1) through (8) of this section are met.

(1) Each change shall:

(i) Meet all applicable requirements and shall not violate or result in the violation of any existing permit term or condition; and

(ii) Not result in a net increase in the allowable emissions of any regulated pollutant at the source.

(2) The change may not be subject to the requirements of title IV of the Act.

(3) Sources must provide contemporaneous written notice to the permitting authority of each such change. Such written notice shall describe each such change, the date of the change, any change in emissions, pollutants emitted, and the applicable requirement to which the source becomes subject as a result of the change.

(4) The change shall not be eligible for the permit shield under § 71.6(n) until such time as a permit shield may be granted in a subsequent permit revision consistent with the provisions of §§ 71.7(g) or 71.11.

(5) The permittee shall keep a record describing changes made under this paragraph (q).

(6) The permittee shall apply for a permit revision by the deadline set forth in § 71.5(b)(2), except that if the deadline would occur after the date on which a renewal application is due, the permitting authority may allow the permittee to incorporate the permit revision request in its renewal application.

(7) The permit shall be revised under the relevant procedures of § 71.7(e), (f), (g), or § 71.11 for which the change is eligible, except that, notwithstanding provisions in those sections, if the change is subsequently processed under minor permit revision or significant permit revision procedures, and the permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the change was ineligible under this paragraph (q), then the source shall be liable from the date the change was made for failure to have applied for a permit revision before the change was made as required under § 71.7.

(8) If eligible for the minor permit revision procedures of § 71.7(g), the following provisions shall apply to changes made under this paragraph (q):

(i) The public notice required under § 71.7(g)(3)(ii) shall state that if no germane and non-frivolous objection is received within 21 days of application, the permitting authority may consider that the change was eligible for processing under this paragraph (q) without further opportunity for public objection. In addition to the provisions of § 71.7(g)(3)(ii) a germane objection is one that objects to the change on the grounds that the source was ineligible under this paragraph (q).

(ii) The provisions of §§ 71.7(g)(5)(i) and (ii) prohibiting the source from making the change do not apply.

(iii) Notwithstanding the provisions of § 71.7(g)(7), the source must comply with all applicable requirements from the date the change was made.

§ 71.7 Permit review, issuance, renewal, reopenings, and revisions.

(a) *Action on application.*

(1) A permit, permit revision, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit revision, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 71.6(l);

(ii) The permitting authority has complied with the applicable requirements for public participation under this section or § 71.11, if applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 71.8(a);

(iv) Except as provided in paragraph (a)(6) of this section, the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) In the case of a program delegated pursuant to § 71.10, except for revisions qualifying for de minimis permit revision procedures under paragraph (f) of this section or for administrative amendment procedures under paragraphs (e)(1)(i) through (iv) of this section, the Administrator has received a copy of the proposed permit and any notice required under § 71.10(d) and has not objected to the issuance of the permit under § 71.10(g) within the time period specified therein.

(2) Except as provided under the initial transition plan provided under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit revision or renewal) within 18 months after receiving a complete application. Notwithstanding the preceding sentence, the permitting authority shall take final action within 12 months after receipt of a complete application containing an early reduction demonstration under section 112(i)(5) of the Act and regulations promulgated thereunder, and within the time period specified under paragraph (g)(5)(v) of this section for a minor permit revision. Final action may be delayed where an applicant fails to provide additional information in a timely manner as requested by the permitting authority under § 71.5(c) .

(3) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. Notwithstanding the above, for revisions that qualify for and are processed through the procedures of paragraph (e), (f), or (g) of this section, the permitting authority need not undertake a completeness determination before commencing revision procedures.

(4) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to any person who requests it, and to EPA, in the case of a program delegated pursuant to § 71.10.

(5) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(6) Any new applicable requirement approved or promulgated by EPA that becomes applicable to a source prior to issuance of a draft permit (whether during issuance or renewal) shall be included in the draft permit. If any new applicable requirement becomes applicable after issuance of a draft permit, and the requirement is not reflected in the draft permit, the permit may be issued without incorporating the new applicable requirement, provided that the permitting authority institutes proceedings no later than the date of permit issuance to reopen the permit consistent with paragraph (i) of this section to incorporate the new applicable requirement and that the permit contains a statement that it is being reopened for this purpose.

(b) *Requirement to apply for a permit.* Except as provided in this paragraph and paragraphs (e), (f), and (g) of this section, no part 70 or part 71 source may operate after the time that it is required to submit a timely and complete application under an approved permit program or this part, except in compliance with a permit issued under a part 70 program or this part. If a part 70 or part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(3) of this section, and as required by § 71.5(c), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.*

(1) Permits being renewed are subject to the same procedural requirements that apply to initial permit issuance, including those for public participation, affected State review, and EPA review, in the case of a program delegated pursuant to § 71.10.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and §§ 71.5(b) and 71.5(c).

(3) If a timely and complete application for a permit renewal is submitted by the permittee consistent with §§ 71.5(b) and 71.5(c), but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or part 71 permit, then all the terms and conditions of the permit, including any permit shield, shall remain in effect until the permitting authority issues or denies the renewal permit. In the case of a program delegated pursuant to § 71.10, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(d) *Permit revisions.* Changes requiring revision of a part 70 or part 71 permit are those that could not be operated without violating an existing permit term or rendering the source subject to an applicable requirement to which the source has not been previously subject. A permit revision for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(e) *Administrative permit amendments.*

(1) An ''administrative permit amendment'' is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change;

(iii) Requires more frequent testing, monitoring, recordkeeping, or reporting;

(iv) Allows for a change in ownership or operational control of a source where

the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) In the case of a program delegated pursuant to § 71.10, incorporates the requirements of a minor new source review (NSR) or major NSR preconstruction permit or decision or a determination under section 112(g) of the Act, provided that such permit or determination was issued in accordance with the procedural requirements of paragraph (e)(4) of this section and contains compliance requirements substantially equivalent to those required under § 71.6.

(vi) Notwithstanding the provisions of paragraph (e)(1)(v) of this section, incorporates a standard promulgated after permit issuance pursuant to section 112 of the Act.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(3) *Administrative permit amendment procedures for changes meeting the criteria under § 71.7(e)(1)(i) through (iv).* Changes meeting the criteria set forth in paragraphs (e)(1)(i) through (iv) of this section may be made to a permit using the following procedures:

(i) The source shall submit to the permitting authority an application containing a proposed addendum to the source's part 70 or part 71 permit. The application shall demonstrate how the proposed change meets one of the criteria for administrative amendments set forth in paragraphs (e)(1)(i) through (iv) of this section, and include certification by the responsible official consistent with § 71.5(i) that the change is eligible for administrative amendment procedures. The addendum shall:

(A) Identify the terms of the existing part 70 or part 71 permit that it proposes to change;

(B) Propose new permit terms consistent with the provisions of this part applicable to the change;

(C) Designate the addendum as having been processed under the procedures of this paragraph (e)(3); and

(D) Specify that the addendum will be effective 60 days from the date of permitting authority receipt unless the permitting authority disapproves the change within such period.

(ii) The permitting authority may allow the source to implement the requested change immediately upon making all required submittals, including the proposed addendum.

(iii) The proposed addendum will become effective 60 days after the permitting authority receives the submittal, provided the permitting authority has not disapproved the request in writing before the end of the 60-day period. The permitting authority shall record the change by attaching a copy of the addendum to the existing part 70 or part 71 permit and, in the case of a program delegated pursuant to § 71.10, shall provide the Administrator with a copy of the addendum.

(iv) If the permitting authority disapproves the change, it shall notify the source of its reasons for disapproving the change in a timely manner. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect. The permitting authority may approve a permit addendum for an administrative permit amendment that varies from the source's application without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the request eligible for administrative amendment procedures and do not change the applicant's proposed determination of which applicable requirements of the Act apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change. However, the source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(v) The process in paragraph (e)(3) of this section may also be used for changes initiated by the permitting authority that meet the criteria under paragraphs (e)(1)(i), (ii), and (iv) of this section. For such changes, the permitting authority shall notify the source of the proposed change and its effective date, and shall attach a copy of the change to the existing permit. On the effective date of the proposed change, the source shall comply with the provisions of the proposed change.

(vi) The permit shield under § 71.6(n) may not extend to administrative amendments processed under paragraph (e)(3) of this section.

(4) *Administrative amendment procedures for changes meeting the criteria under § 71.7(e)(1)(v).* In the case of a program delegated pursuant to § 71.10, a change meeting the criteria of paragraph (e)(1)(v) of this section may be made to a permit using the procedures in the following paragraphs (e)(4) (i) through (iv) of this section.

(i) An applicant shall submit prior to construction (including modification), a permit application to the permitting authority meeting the requirements for applications of minor NSR, major NSR, determinations under section 112(g) of the Act, and paragraph (e)(3)(i) of this section. The application must:

(A) Specify draft permit terms governing construction of any proposed new or modified emissions unit or combination thereof, including all applicable requirements;

(B) Inform the permitting authority that the source is requesting to revise the part 70 or part 71 permit using the process under this paragraph (e)(4);

(C) Include a proposed addendum to the part 70 or part 71 permit that identifies the terms of the existing part 70 or part 71 permit that will change and the draft terms and conditions which will govern operation of the new or modified unit consistent with part 71 (including compliance requirements consistent with § 71.6) and any notice requirements contained in paragraph (e)(4)(ii) of this section, and that incorporates relevant terms and conditions from the proposed minor NSR or major NSR or action under section 112(g) of the Act; and

(D) Include an affidavit signed by a responsible official stating that the source accepts all liability of making the requested change prior to final permitting authority action to revise the source's permit.

(ii) For any minor NSR or major NSR or action under section 112(g) of the Act and part 71 permit addendum proposed for approval under paragraph (e)(4) of this section, the permitting authority shall:

(A) Provide a comment period for the public and affected States prior to construction of the change of at least 30 days or, in the case of minor NSR, as many days as required by the applicable implementation plan approved as of November 15, 1993, but not less than 15 days. Where a minor NSR action includes a netting transaction involving either a single emissions increase above applicable title I modification significance levels or a sum of increases above applicable major source thresholds, a public comment period of at least 30 days must be provided for a change to qualify for processing under this paragraph (e)(4);

(B) Provide notice and a copy of the application filed pursuant to paragraph (e)(4)(i) of this section to EPA by the beginning of the public comment period;

(C) Issue a minor NSR or major NSR permit or determination or issue a determination under section 112(g) of the Act and an addendum to the part 70 or part 71 permit for the operation of the change if it determines the requirements of the applicable minor NSR, major NSR, or review program under section 112(g) of the Act and part 71 have been met; and

(D) Provide an opportunity for EPA objection consistent with the provisions of § 71.10(g), starting either upon receipt of the notice described under paragraph (e)(4)(ii)(D)(*1*) or (*2*) of this section as applicable or from the date the permitting authority made its final minor NSR, major NSR, or determination under section 112(g) of the Act, whichever is later.

(*1*) For changes approved by the permitting authority under major NSR or review under section 112(g) of the Act, the source shall provide a notice to EPA and the permitting authority which must be postmarked at least 21 days before the anticipated date of initial startup of the new or modified source. For such changes, the source may commence operation at the end of the 21-day period unless EPA objects in writing to the proposed change within the 21-day period. Upon notification of such objection, the source may not operate such a change and must comply with the terms and conditions of the permit that it sought to change.

(*2*) For changes approved by the permitting authority under minor NSR, the source shall notify EPA and the permitting authority of the anticipated date for startup of the change. The source may commence operation of such a change upon postmark of such notice.

(iii) The proposed part 71 permit addendum may become effective 45 days after EPA receives notice under paragraph (e)(4)(ii)(D) of this section or 45 days from the date the permitting authority makes its final preconstruction determination, whichever is later, provided that by the end of such period EPA has not objected to the change.

(iv) If EPA objects to the change, EPA shall notify the permitting authority and the source of its reasons for objecting to the change. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect. If, subsequent to source implementation of the requested change, EPA objects to the change, the source shall be liable for having operated in violation of its existing permit from the time it implemented the change. Notwithstanding the preceding sentence, the permitting authority may revise a proposed addendum making an administrative permit amendment in response to an EPA objection without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the change eligible for administrative amendment procedures and do not change the applicant's proposed determination of which applicable requirements apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change and the source's proposed permit revision. However, the source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(v) The permitting authority may provide a permit shield consistent with the provisions of § 71.6(n) .

(5) *Administrative permit amendment procedures for changes meeting the criteria under § 71.7(e)(1)(vi).* Changes meeting the criteria set forth in paragraph (e)(1)(vi) of this section may be made to a permit using the following procedures:

(i) After receipt of the initial notification required under the standard under section 112 of the Act, the permitting authority shall prepare a proposed addendum to the source's part 70 or part 71 permit. The addendum shall contain the following:

(A) A statement that the standard under section 112 of the Act is an applicable requirement for the permitted source;

(B) A schedule of compliance, consistent with § 71.5;

(C) A requirement to submit any implementation plan or report required under the standard;

(D) A requirement to apply for a minor permit revision by the deadline for the compliance statement, unless the source is exempted from this requirement by the rulemaking promulgating the applicable standard under section 112 of the Act. If the source is utilizing an alternative requiring case-by-case approval, such as emissions averaging, the source shall apply for a significant permit revision in lieu of the minor permit revision required in the preceding sentence. If the compliance statement deadline is within 6 months of the end of the permit term, the source may incorporate its application for the revisions into its application for permit renewal, in lieu of applying for revisions by the compliance statement deadline;

(E) Any other provisions required to be incorporated into the permit by the applicable standard under section 112 of the Act.

(ii) The permitting authority shall make available for public review and comment for at least 30 days a list of sources whose permits are reopened under this paragraph (e)(5). Notice of the availability of the list shall be given by such time as to assure that any additional administrative amendments for sources subject to the standard and not on the list take effect within 18 months after publication of the standard under section 112 of the Act. If after considering public comment, the permitting authority determines that permits for other sources must be reopened to incorporate standards under section 112(g) of the Act, it shall notify such sources of its intent to do so at least 30 days before reopening the permit, and may use the provisions of this paragraph (e)(5).

(iii) The proposed addendum shall become effective not later than 18 months after publication of the standard under section 112 of the Act. The permitting authority shall attach a copy of the addendum to the existing part 70 or part 71 permit and shall, in the case of a program delegated pursuant to § 71.10, provide the Administrator with a copy.

(iv) The permitting authority shall, as soon as practicable, place all information required to be submitted by the permit with respect to the standard under section 112 of the Act in a docket accessible to the public.

(v) The permit shield under § 71.6(n) may not extend to administrative amendments processed under paragraph (e)(5) of this section.

(f) *De minimis permit revisions.*

(1) A de minimis permit revision may be made by the permitting authority to a part 70 or part 71 permit provided that the permit contains a term or condition authorizing the source to make use of de minimis permit revision procedures for qualifying changes at the applicable unit and such term or condition was established during permit issuance or renewal, or under permit revision procedures contained in § 71.11, and provided the action taken meets the criteria and procedures specified in paragraph (f) of this section.

(2) *Criteria.* For the change to be considered de minimis and eligible for de minimis permit revision procedures, the conditions in paragraph (f)(2)(i) of this section and the applicable conditions and limits in paragraphs (f)(2) (ii) and (iii) of this section must be

met. The limits in paragraphs (f)(2) (ii) and (iii) of this section are on a single pollutant basis except where a combination of hazardous air pollutants is indicated.

(i) *Conditions limiting de minimis changes.*

(A) The source must not be in violation of the part 70 or part 71 permit terms and conditions it seeks to change.

(B) In the case of existing units, the need for a permit revision must result from a physical or operational change. [OPTION: ADD TO END OF SENTENCE: unless the permit revision solely involves monitoring or recordkeeping requirements.]

(C) [OPTION: ADD TO BEGINNING OF SENTENCE: Except for permit revisions solely involving monitoring or recordkeeping requirements,] The change may not involve a permit term or condition established to limit emissions which is federally enforceable only as a part 70 or part 71 permit term or condition.

(D) De minimis emission threshold levels cannot be met by offsetting emission increases with emission decreases at the same source.

[OPTION: ADD NEW PARAGRAPHS (f)(2)(i) (E) and (F):

(E) The change may not involve a change to monitoring or recordkeeping requirements unless, prior to the source's submission of a de minimis permit revision application, the permitting authority affirmatively determines that the monitoring or recordkeeping change has been demonstrated by the source:

(*1*) To not affect the capability of the method to measure emission results as precisely, accurately, and timely as is provided by the existing monitoring or recordkeeping method;

(*2*) To only affect a single source or facility; and

(*3*) To not constitute a new or alternative monitoring method or represent a new operating level of the method.

(F) The criteria for all demonstrations required under paragraph (f)(2)(i)(E) of this section shall include, in addition to the requirements of paragraph (f)(3)(C) of this section, an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(c) utilizing appendices A, B, C, and D of 40 CFR part 64. [END OF OPTION]

(ii) *Unit-based change limits.* For a change at any emissions unit to qualify as a unit-based de minimis permit revision, the total emissions of an entirely new unit and the total emissions at an existing unit after the change (i.e., the sum of the existing emissions before the change plus the emissions increase that results from the change) may not exceed:

[ALTERNATIVE 1 FOR paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, the following emissions over the life of the permit:

(*1*) 4 tons of CO;

(*2*) 1 ton of NO_X;

(*3*) 1.6 tons of SO_2;

(*4*) 0.6 ton of PM–10;

(*5*) 1 ton of VOC.

[ALTERNATIVE 2 to paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, 20 percent of the applicable major source threshold, or 5 tpy of VOC or NO_X, whichever is greater, but in no event more than 15 tpy PM–10 or 0.6 tpy lead.

[ALTERNATIVE 3 to paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, 5 tpy.

[ALTERNATIVE 4 to paragraph (f)(2)(ii)(A):]

(A) For criteria pollutants, 30 percent of the applicable major source threshold or 5 tpy, whichever is greater. [END OF ALTERNATIVES to paragraph (f)(2)(ii)(A)]

[ALTERNATIVE 1 to paragraph (f)(2)(ii)(B):]

(B) For HAP's, 0 tpy.

[ALTERNATIVE 2 to paragraph (f)(2)(ii)(B):]

(B) For HAP's, 20 percent of the major source thresholds established under section 112 of the Act or 50 percent of the de minimis levels established under section 112(g) of the Act, whichever is less.

[ALTERNATIVE 3 to paragraph (f)(2)(ii)(B):]

(B) For HAP's, 75 percent of de minimis levels established under section 112(g) of the Act. [END OF ALTERNATIVES to paragraph (f)(2)(ii)(B)]

(C) For other pollutants regulated only under section 111 of the Act, the significance levels in § 52.21(b)(23)(i).

(iii) *Increment-based change limits.* A change at any emissions unit not qualifying for a unit-based change may still qualify as a de minimis permit revision if the following criteria are met:

(A) *Additional conditions:*

(*1*) Any resulting emissions limit must be expressed in the same form and units of measure as the previous emissions limit;

(*2*) Any associated recalibration of continuous emissions monitors (CEM) or operational parameters must be undertaken in accordance with emission rates-to-CEM or operational parameter ratios established in the operating permit program, in the source's permit, or through permit issuance procedures providing at least as much permitting authority, EPA (in the case of a program delegated pursuant to § 71.10), and affected State review and public participation as minor permit revision procedures; [OPTION: DELETE PREVIOUS PARAGRAPH (f)(2)(iii)(A)(*2*).]

(B) *Size restrictions on individual change.* No emissions increase at any unit may exceed:

[ALTERNATIVE 1 to paragraph (f)(2)(iii)(B)(*1*):]

(*1*) For criteria pollutants, the following emissions over the life of the permit:

(*i*) 4 tons of CO;

(*ii*) 1 ton of NO_X;

(*iii*) 1.6 tons of SO_2;

(*iv*) 0.6 ton of PM–10;

(*v*) 1 ton of VOC.

[ALTERNATIVE 2 to paragraph (f)(2)(iii)(B)(*1*):]

(*1*) For criteria pollutants, 20 percent of the applicable major source threshold, 10 percent of the limit applicable to the unit undergoing the change, or 15 tpy VOC or NO_X, whichever is less but in no event less than [2–5] tpy VOC or NO_X or greater than 15 tpy PM–10 or 0.6 tpy lead.

[ALTERNATIVE 3 to paragraph (f)(2)(iii)(B)(*1*):]

(*1*) For criteria pollutants, 30 percent of applicable major source thresholds, or 15 percent of the limit applicable to the unit undergoing the change, whichever is less, but in no event less than 5 tpy for VOC or NO_X. [END OF ALTERNATIVES FOR paragraph (f)(2)(iii)(B)(*1*)]

[ALTERNATIVE 1 to paragraph (f)(2)(iii)(B)(*2*):]

(*2*) For HAP's, 0 tpy.

[ALTERNATIVE 2 to paragraph (f)(2)(iii)(B)(*2*):]

(*2*) For HAP's, 20 percent of the major source thresholds established under section 112 of the Act, 50 percent of the de minimis levels set pursuant to section 112(g) of the Act, or 10 percent of the limit applicable to the unit undergoing change, whichever is less.

[ALTERNATIVE 3 to paragraph (f)(2)(iii)(B)(*2*):]

(*2*) For HAP's, 75 percent of de minimis levels established under section 112(g) of the Act. [END OF ALTERNATIVES FOR paragraph (f)(2)(iii)(B)(*2*)]

(*3*) For other pollutants regulated only under section 111 of the Act, the significance levels in § 52.21(b)(23)(i) of this chapter.

(3) *De minimis permit revision procedures.*

(i) *Application.* A source may submit an application to the permitting authority requesting the use of de minimis permit revision procedures

provided that the permit contains a term or condition that authorizes the source to make use of the de minimis permit revision procedures for qualifying changes, the application meets the requirements of § 71.5(f), and the permit application includes the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) An addendum containing the terms and conditions of the source's suggested draft permit revision;

(C) A demonstration that the proposed change meets the criteria for a de minimis permit revision; and

(D) Certification by a responsible official consistent with § 71.5(i) that:

(*1*) The source is in compliance with any permit terms or conditions it seeks to revise;

(*2*) The proposed revision meets the criteria for use of de minimis permit revision procedures; and

(*3*) The source accepts all liability of making the requested change prior to final permitting authority action to revise the source's permit.

[OPTION: ADD NEW PARAGRAPH:

(E) A summary of any required demonstration performed in accordance with paragraphs (f)(2)(i)(E) and (F) of this section, and verification of such demonstration's affirmative approval by the permitting authority.]

(ii) The permitting authority may allow the source to implement the requested change 7 days after the permitting authority's receipt of the source's de minimis permit revision application. At its discretion, the permitting authority may grant a request by the source to implement the change after less than 7 days.

(iii) *Public notification.* Public notice shall be provided by the source of de minimis permit revision applications received by the permitting authority on a monthly, batched basis. At a minimum, the notice shall include: the name and address of the source where the proposed change would occur, a description of the change, the effective date of the permit revision, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; reference to the pertinent administrative record/public docket; and the name, address and phone number of a person from whom interested persons may obtain additional information, including the permit application and supporting documentation as described in paragraph (f)(3)(i) of this section. [OPTION: ADD TO END OF PARAGRAPH: In addition, for permit revisions involving changes to monitoring or recordkeeping requirements, the permitting authority shall also submit to the publicly available docket the complete demonstration required by paragraphs (f)(2)(i) (E) and (F) of this section, a summary of the demonstration, and an affirmative statement of the demonstration's adequacy.]

(iv) *Permit amendment.* The permit is revised by attaching the proposed addendum to the permit with the addendum specifying when the permit revision takes effect consistent with the following provisions.

(A) Where the preconstruction permitting agency affirmatively approved the change pursuant to a preconstruction review process that included at least a 21-day public comment period and the preconstruction permitting agency authorized the change to be made under the de minimis permit revision process, the addendum shall take effect upon submission to the part 71 permitting authority of a complete de minimis permit revision application.

(B) Where the preconstruction permitting agency did not affirmatively approve the change pursuant to a preconstruction review that provided for at least a 21-day public comment period, the addendum shall take effect [30–90] days after the date public notice is given under paragraph (f)(3)(iii) of this section if the part 71 permitting authority does not disapprove the request within that time period. The part 71 permitting authority shall retain the authority to disapprove such a change made through the de minimis permit revision process for a period of [30–90] days following the date public notice is given under paragraph (f)(3)(iii) of this section.

(v) *EPA and affected State notification.*

(A) In the case of a program delegated pursuant to § 71.10, the permitting authority shall send a copy of the addendum to the permit to EPA within 7 days of the date the addendum takes effect.

(B) In all cases, the permitting authority shall send a copy of the addendum to any affected State within 7 days of the date the addendum takes effect.

(vi) *Public request for disapproval.*

(A) Within [15–45] days of the date public notification is given, any person may request that the permitting authority disapprove the change if the permitting authority retained authority to disapprove the de minimis permit revision as described under paragraph (f)(3)(iv)(B) of this section.

(B) Where the permitting authority was not required to retain authority to disapprove the de minimis permit revision, the public may petition the permitting authority to revoke the permit revision allowing the change.

(4) *Source liability.* If, after a source makes the requested change, the permitting authority disapproves the change or EPA objects to the change (in the case of a program delegated pursuant to § 71.10), the source shall be liable for having operated in violation of its existing permit from the time at which the source made the change. Notwithstanding the preceding sentence, the permitting authority may issue a permit revision that varies from the source's proposed addendum without rendering the source liable for violating its existing permit if the proposed addendum includes enforcement terms sufficient to support an enforcement action and the permitting authority's revisions are not necessary to make the change eligible for de minimis permit revision procedures and do not change the applicant's determination of which requirements of the Act apply to the source as a result of the requested change. The source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(5) The permit shield under § 71.6(n) may not extend to de minimis permit revisions.

(g) *Minor permit revision procedures.*

(1) *Criteria.*

(i) Minor permit revision procedures may be used only for those permit revisions that:

(A) Do not affect permit terms or conditions that the source is violating;

(B) Do not involve changes to existing monitoring, reporting, or recordkeeping requirements in the permit, unless such changes are necessary to implement other changes that qualify for minor permit revision procedures [OPTION: REPLACE PARAGRAPH (g)(1)(i)(B) WITH THE FOLLOWING:

(B) Involve changes to monitoring or recordkeeping requirements that are:

(*1*) Changes in the enforceable operating level of the method that, prior to the source's submission of a minor permit revision application, the permitting authority has affirmatively determined the source has demonstrated to be correlated to the source's existing or proposed compliance emissions rate, but such changes may not involve a switch to a new or alternative monitoring or recordkeeping operating parameter;

(*2*) Changes to a monitoring or recordkeeping method that affect the measurement sensitivity of the method and representativeness of the data (e.g., precision, accuracy, measurement location, or averaging time) such that there may be a measurable effect in relation to the relevant source compliance emissions rate; changes that affect the scope and intent of the existing monitoring method (e.g., modified sample conditioning system, upgraded detector, upgraded data management system); or changes that may be generally applicable to similar monitoring methods in the same or other source categories (e.g., equipment modification for interference avoidance). Such changes may not involve a switch to new or alternative monitoring methods. Prior to the source's submission of a minor permit revision application, the permitting authority shall have affirmatively determined that the monitoring or recordkeeping change has been demonstrated by the source to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate; or

(*3*) In the case of a program delegated pursuant to § 71.10, changes to monitoring or recordkeeping methods that have been approved pursuant to major or minor NSR and that are demonstrated therein to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate. The application for the minor permit revision must include supporting documentation from the major or minor NSR permit approval, information regarding the demonstration and approval of the requested monitoring or recordkeeping method, and information in accordance with § 71.7(g)(2) as related to the monitoring change. END OF OPTION];

(C) Do not involve or depend on netting transactions undertaken to avoid being subject to preconstruction review under part C or D of title I of the Act unless such emissions reductions:

(*1*) Have been approved pursuant to a minor NSR process for which a 30-day public comment period was provided; or

(*2*) Do not involve any single emissions increase that exceeds the applicable threshold for being a major modification under part C or D of title I of the Act, and the sum of all the contemporaneous increases does not exceed the applicable threshold for determining whether a source is major;

(D) Do not involve offsets or modifications under section 112(g) of the Act, unless the change has been approved pursuant to a review process under section 112(g) of the Act;

(E) Are not modifications subject to part C or D of title I of the Act, unless the change has been approved pursuant to major NSR and would incorporate all applicable requirements determined therein into the part 70 or part 71 permit;

(F) [OPTION: ADD TO BEGINNING OF SENTENCE: Except for permit revisions solely involving monitoring or recordkeeping requirements,] Do not seek to establish or change a permit term or condition established to limit emissions which is federally enforceable only as a part 70 or part 71 permit term or condition. Such terms and conditions include:

(*1*) A federally-enforceable emissions cap assumed in the part 70 or part 71 permit to avoid classification as a modification under any provision of title I of the Act;

(*2*) An alternative emission limit established under the provisions of § 71.6(a)(1)(iii) equivalent to a requirement contained in an applicable implementation plan;

(*3*) An alternative emissions limit established in the part 70 or part 71 permit pursuant to regulations promulgated under section 112(i)(5) of the Act;

(*4*) An emissions limit established in the part 70 or part 71 permit pursuant to regulations promulgated under section 112(j) of the Act; and

(*5*) Any other term or condition for which there is no corresponding underlying applicable requirement and the establishment of which allows the source to avoid an applicable requirement to which the source would otherwise be subject.

(ii) Notwithstanding paragraph (g)(1)(i) of this section, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

[OPTION: ADD NEW PARAGRAPH:

(iii) Any demonstration required by paragraph (g)(1)(i)(B) of this section shall include an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(c) utilizing appendices A, B, C, and D of 40 CFR part 64.]

(2) *Application.* An application requesting the use of minor permit revision procedures shall meet the requirements of § 71.5(f) and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) An addendum containing the terms and conditions of the source's suggested draft permit revision;

(iii) A demonstration that the proposed change is eligible to be processed as a minor permit revision;

(iv) Certification by a responsible official, consistent with § 71.5(i), that:

(A) The proposed change meets the criteria for use of minor permit revision procedures;

(B) The source is in compliance with the permit terms or conditions it seeks to revise;

(C) Public notice of the proposed revision has been provided pursuant to paragraph (g)(3) of this section; and

(D) Notice to the Administrator (in the case of a program delegated pursuant to § 71.10), and affected States of the proposed revision has been provided pursuant to paragraph (g)(4) of this section; and

(v) An affidavit signed by a responsible official stating that the source accepts all legal risks of making the requested change prior to final permitting authority action to revise the source's permit.

[OPTION: ADD NEW PARAGRAPH:

(vi) For a change involving changes to monitoring or recordkeeping requirements, a summary of any demonstration required by paragraph (g)(1)(i)(B) of this section and performed in accordance with paragraph (g)(1)(iii) of this section and verification of its approval by the permitting authority. If in approving the demonstration the permitting authority determines that subsequent verification testing of the change is necessary, the permitting authority may establish a compliance schedule for performing verification testing to further demonstrate, consistent with paragraph (g)(1)(iii) of this section, the adequacy of the change. Such compliance schedule, after approval by the permitting authority, shall be attached to the addendum described in paragraph (g)(2)(ii) of this section and be processed as a permit term and shall not allow the source to begin verification testing in advance of the time when the source would be allowed to implement the minor permit revision requested change. The approved compliance schedule shall include a commitment by the source to provide the results of the verification testing to the permitting authority within 90 days of submittal of the minor permit revision application. Upon

receipt of the verification testing results, the permitting authority shall determine whether the results demonstrate the adequacy of the change consistent with paragraph (g)(1)(iii) of this section. The permitting authority shall promptly notify the source in writing of its determination, and place a copy of such notice in the public docket. The permit shield under § 71.6(n) may extend to minor permit revisions involving monitoring and recordkeeping changes only after any required further verification testing of the change has been completed.]

(3) *Public notification.*

(i) Immediately upon filing an application for a minor permit revision, the source shall provide notice to the public of the requested minor permit revision by:

(A) Publication of a notice in a newspaper of general circulation in the area where the source is located or in a State publication designed to give the general public notice; and

(B) Sending a letter to persons on a mailing list developed by the permitting authority, including those who previously participated in any public comment process provided for the source's permit and those who request to be placed on a list to receive notification of permit issuance, revision, reopening, or renewal requests.

(ii) In addition to the elements required under § 71.11(d)(4), the public notice shall describe the requested change and state that if no germane and non-frivolous objection to the requested change is received by the permitting authority within 21 days of publication of the notice, the source may implement the change without the permitting authority providing further opportunity for public participation. For purposes of this paragraph (g)(3)(ii), a germane objection is one that objects to the use of minor permit revision procedures for the requested change on the grounds that the source has failed to comply with the procedural and notification requirements of paragraphs (g)(3) and (4) of this section or that the requested change is ineligible for the use of minor permit revision procedures under paragraph (g)(1)(i) of this section. For purposes of this paragraph (g)(3)(ii), a non-frivolous objection must specify the basis for its objection and present factual or other relevant information in support of its objection.

(iii) The permitting authority shall place a copy of the minor permit revision request in a public docket. [OPTION: ADD A NEW SENTENCE: The permitting authority shall also place in the docket any complete demonstration required by § 71.7(g)(1)(i)(B), a summary of the demonstration, the permitting authority's analysis of the demonstration, and an affirmative statement of the demonstration's adequacy.]

(4) *EPA and affected State notification.*

(i) In the case of a program delegated pursuant to § 71.10, immediately upon filing an application for a minor permit revision, the source shall notify the Administrator of the requested permit revision in the same manner and subject to the same conditions required of permitting authorities under § 71.10(d). Such notification shall relieve the permitting authority of the requirement to provide notice to the Administrator of the requested minor permit revision under § 71.10(d), but shall not relieve the permitting authority of the requirement to promptly send to the Administrator any notice under § 71.8(b).

(ii) In all cases, immediately upon filing an application for a minor permit revision, the source shall notify affected States of the requested permit revision in the same manner and subject to the same conditions required of the permitting authority under § 71.8(a). Such notification shall relieve the permitting authority of the requirement to provide notice to affected States of the requested minor permit revision under § 71.8(a), but shall not relieve the permitting authority of the requirement to send any affected State any notice under § 71.8(b).

(5) *Timetable for issuance.* Upon receipt of an application for a minor permit revision, the permitting authority shall provide at least 21 days for public comment on the requested change, and shall keep a record of the commenters and the issues raised during the public comment period. Such records shall be made available to the public. The minor permit revision shall occur according to the following procedures:

(i) If the permitting authority receives no public objection to the requested change within 21 days of publication of the public notice, the source may implement the requested change on the 22nd day after publication of the public notice, provided that:

(A) The permitting authority has neither denied the minor permit revision nor determined that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(B) In the case of a program delegated pursuant to § 71.10, the Administrator has not objected to the proposed minor permit revision.

(ii) If the permitting authority receives a public objection to the requested change within 21 days after publication of the public notice, the permitting authority must determine within 28 days of publication of the public notice whether the objection is germane and non-frivolous, and proceed according to the following procedures:

(A) If the permitting authority within 28 days of public notification finds the public objection to be either frivolous or not germane, the permitting authority may respond to the public objection in the course of processing the minor permit revision request as a minor permit revision, and the source may implement the requested change on the 29th day after publication of the public notice or upon notification from the permitting authority that the permitting authority has determined the public objection to be frivolous or not germane, whichever is first, provided that:

(*1*) The permitting authority has neither denied the minor permit revision application nor determined that the request fails to meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(*2*) In the case of a program delegated pursuant to § 71.10, the Administrator has not objected to the proposed minor permit revision.

(B) If the permitting authority fails to determine within 28 days after publication of the public notice of the request for a minor permit revision whether a public objection submitted within 21 days of such notice is germane and nonfrivolous, the source may implement the requested change on the 29th day after publication of the public notice, provided that:

(*1*) The permitting authority has neither denied the minor permit revision application nor determined that the request fails to meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(*2*) In the case of a program delegated pursuant to § 71.10, the Administrator has not objected to the proposed minor permit revision.

(C) If the permitting authority finds the public objection to be germane and nonfrivolous, the permitting authority shall not issue a final minor permit revision for the change, and shall either deny the minor permit revision application or determine that the requested change does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures. If the permitting authority continues to process the requested change under

significant permit revision procedures, public notice of the proposed change must be provided in the manner required for significant permit revisions under § 71.11. Such notice shall provide at least 30 days for public comment on the requested change, shall identify the time and place of any hearing that may be held, and shall include a statement of procedures to request a hearing if a hearing has not already been scheduled. For purposes of this paragraph, such a hearing may be held as soon as 14 days after publication of a notice that the requested change is being processed as a significant permit revision. The source shall not implement the requested change unless and until the permitting authority approves it as a significant permit revision.

(iii) Any person who filed a public objection pursuant to this paragraph which the permitting authority within 28 days of public notification does not determine to be germane and nonfrivolous may bring suit in Federal court to compel action by the permitting authority and, in accordance with applicable standards for obtaining such relief under Federal law, seek an injunction in Federal court prohibiting the source from implementing the requested change.

(iv) In the case of a program delegated pursuant to § 71.10, where the minor permit revision has not been denied or required to be reviewed under significant permit revision procedures, the permitting authority may issue a final minor permit revision after EPA's 45-day review period has elapsed provided the Administrator has not objected to the requested change, or after EPA has notified the permitting authority after the close of the public comment period that EPA will not object to issuance of the minor permit revision, whichever is first, provided that the final minor permit revision does not differ from the draft permit except to the extent any changes to the draft permit qualify for administrative permit amendment procedures under paragraph (e) of this section.

(v) Within 60 days after the permitting authority's receipt of an application for a minor permit revision, or 15 days after the expiration of EPA's 45-day review period (in the case of a program delegated pursuant to § 71.10), whichever is later, the permitting authority shall:

(A) Issue the minor permit revision as proposed;

(B) Deny the minor permit revision application;

(C) Determine that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; or

(D) Revise the draft minor permit revision and, in the case of a program delegated pursuant to § 71.10, if such revision includes any changes that do not qualify for processing as administrative permit amendments under paragraph (e) of this section, transmit to the Administrator the new proposed permit revision as required by § 71.10(d).

(vi) Any person who objected to a minor permit revision request during the public comment period shall be notified by the permitting authority upon final approval of the request. The permitting authority shall also place a copy of its final approval decision in the public docket in which it places minor permit revision requests when received or provide a substantially equivalent means of public access to its final decision.

(6) *Reopening of the public comment period.* If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

(7) *Issuance and effective date of permit.*

(i) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit.

(ii) A final permit decision shall become effective immediately upon issuance of the decision unless a later effective date is specified in the decision.

(8) *Source's ability to make change.* The source may make the change proposed in its minor permit revision application in accordance with paragraph (g)(5) of this section. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (g)(5)(v)(A) through (D) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to revise. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.

(9) *Source liability.* If, after a source makes the requested change but prior to a permitting authority's final action to approve the change and revise the permit, the Administrator objects to the proposed minor permit revision (in the case of a program delegated pursuant to § 71.10), or the permitting authority either denies the minor permit revision or determines that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures, the source shall be liable for having operated in violation of its existing permit from the time at which it implemented the requested change. Notwithstanding the preceding sentence, the permitting authority may issue a permit revision that varies from the source's application without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the change eligible for minor permit revision procedures and do not change the applicant's proposed determination of which requirements of the Act apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change and the source's proposed permit revision. However, the source would remain liable for any violations of the requirements of the Act applicable as a result of the change and the source's proposed permit revision. [OPTION: ADD NEW SENTENCE: If, after the permitting authority's final action to revise the permit, any verification testing of the new operating level or revised monitoring approach as required by paragraph (g)(2)(vi) of this section demonstrates that the new operating level or revised monitoring approach fails to demonstrate compliance, the source then shall comply with the monitoring and recordkeeping permit terms and conditions that applied to the source before the minor permit revision, the minor permit revision shall be null and void and cease to have effect, and the source shall be liable for operating in violation of its permit from the time it implemented the change.]

(10) *Permit shield.* The permit shield under § 71.6(n) may extend to minor permit revisions, provided that the permitting authority has taken final action to issue the minor permit revision as a permit revision.

(h) *Significant permit revision procedures.*

(1) *Criteria.* Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as administrative amendments, de minimis permit revisions, or minor permit revisions. At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered a significant change. [OPTION: DELETE PRECEDING SENTENCE] Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(2) Significant permit revisions shall meet all requirements, including those for applications, public participation, review by affected States, and in the case of a program delegated pursuant to § 71.10, review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall implement this review process to complete review on the majority of significant permit revisions within 9 months after receipt of a complete application.

[OPTION: ADD NEW PARAGRAPH (h)(3):

(3) Changes involving new or alternative monitoring methods that have not been approved pursuant to major or minor NSR under criteria equivalent to those contained in this paragraph (h)(3) shall be processed as significant permit revisions. Permitting authorities may approve such changes only where the new or alternative monitoring or recordkeeping method is demonstrated to have a known relationship and ability to determine compliance with the applicable standard. Such demonstration shall include an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(e) utilizing appendices A, B, C, and D of 40 CFR part 64. The permitting authority shall include the demonstration and written evidence of the permitting authority's evaluation of the demonstration in the proposed permit it sends to EPA (in the case of a program delegated pursuant to § 71.10) for review as required by § 71.10.]

(i) *Reopening for cause.*

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 70 or part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to § 71.6 or paragraph (c)(3) of this section.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The permitting authority or EPA (in the case of a program delegated pursuant to § 71.10) determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable. Notwithstanding the preceding sentence, proceedings to reopen for standards under section 112 of the Act may use the following procedures:

(i) Where the standard under section 112 of the Act is published after permit issuance, administrative amendment procedures under paragraph (e)(5) of this section may be used.

(ii) Where the standard under section 112 of the Act is published before permit issuance and a compliance statement required under the standard under section 112 of the Act is due after permit issuance, the source shall apply for a minor permit revision by the compliance statement deadline to incorporate requirements necessary to assure compliance with the standard, unless the source is exempted from this requirement under paragraph (i)(2)(iii) of this section or under the rulemaking promulgating the standard under section 112 of the Act. If the source is utilizing alternatives requiring case-by-case approval, such as emissions averaging, or if required under the rulemaking promulgating the standard under section 112 of the Act, the source shall apply for a significant permit revision by the compliance statement deadline, in lieu of the requirement in the preceding sentence to apply for a minor permit revision.

(iii) Sources subject to the following standards under section 112 of the Act published as of *[DATE OF PUBLICATION OF FINAL RULE]* are exempt from the requirements in paragraph (i)(2)(ii) of this section to apply for a minor permit revision: NESHAP for Industrial Process Cooling Towers, at 40 CFR part 63, subpart Q.

(3) Reopenings under paragraph (i)(1) of this section shall not be initiated before a notice of such intent is provided to the part 70 or part 71 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency. Where reopening for standards under section 112 of the Act requiring initial notification by the source, and where the source has provided such notification to the permitting authority by the applicable date, the permitting authority need not provide the notice required by the preceding sentence.

(j) *Reopenings for cause by EPA for delegated programs.*

(1) In the case of a program delegated pursuant to § 71.10 , if the Administrator finds that cause exists to terminate, revise, or revoke and reissue a permit pursuant to paragraph (i) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, revision, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he or she finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that

EPA makes and to terminate, revise, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (j)(2) of this section or fails to resolve any objection pursuant to paragraph (j)(4) of this section, the Administrator will terminate, revise, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (j)(1) through (j)(4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

§ 71.8 Affected State Review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or Tribal area, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2, on or before the time that the permitting authority provides this notice to the public pursuant to §§ 71.7(e)(4), 71.7(h), 71.7(i) or 71.11(d) and shall provide any affected State a copy of the addendum for a de minimis permit revision within 7 days of the date on which the addendum takes effect.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State (and the Administrator, in the case of a program delegated pursuant to § 71.10) in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

§ 71.9 Permit Fees.

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Preparing generally applicable guidance regarding the permit program or its implementation or enforcement;

(2) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(3) Processing permit reopenings;

(4) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(5) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(6) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(7) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.*

(1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of $45 dollars per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(2) For part 71 programs that are delegated pursuant to § 71.10, the annual fee for each part 71 source shall be the amount specified in paragraph (c)(1) of this section plus a surcharge of $3 per ton per year. The surcharge will be used to defray the Agency's cost of administering program delegation.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee will vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

$$\text{Cost per ton} = (E \times \$45) + [(1-E) \times \$C] + \$3 \text{ surcharge}$$

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. The $3 surcharge covers EPA's cost for administering contractor permit program activities. C shall be computed by using the following formula:

$$C = [B+T+N] \text{ divided by } 12{,}300{,}000$$

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents non-personnel data management and tracking costs.

(4) For programs that are delegated in part and that also use contractor assistance, the fee shall be computed using the formula in paragraph (c)(3) of this section, provided that E represents the proportion of total effort (expressed as a percentage) expended by EPA and the delegate agency.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(g).

(6) ''Actual emissions'' means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the above, if the Administrator determines that the fee structures provided in paragraphs (c)(1) through (c)(4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) *Prohibition on fees with respect to emissions from affected units.* Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V of the Act shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) *Submission of initial fee calculation work sheets and fees.*

(1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment in an amount that equals one-third of the annual fees owed must accompany each initial fee calculation work sheet. The balance of the annual fees owed must be paid within four months of the due date of the initial fee or within one year of the effective date of the part 71 program, whichever is earlier.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined using the compliance methods in the permit, the actual emissions should be determined using federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its actual emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.

(f) *Deadlines for submission.*

(1) When EPA withdraws approval of a part 70 program and implements a part 71 program, part 71 sources shall submit initial fee calculation work sheets and fees in accordance with the following schedule:

(i) Sources having SIC codes between 0100 and 2499 inclusive shall complete and submit fee calculation work sheets and fees within 4 months of the effective date of the part 71 program;

(ii) Sources having SIC codes between 2500 and 2999 inclusive shall complete and submit fee calculation work sheets and fees within 5 months of the effective date of the part 71 program;

(iii) Sources having SIC codes between 3000 and 3999 inclusive shall complete and submit fee calculation work sheets and fees within 6 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(b)(1).

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(b)(1) .

(g) *Fees for sources that are issued part 71 permits following an EPA objection pursuant to § 71.4(e).* Fees for such sources shall be determined as provided in paragraph (c) of this section. However, initial fee calculation work sheets for such sources and full payment of annual fees shall be due three months after the date on which the source's part 71 permit is issued.

(h) *Annual emissions reports.*

(1) *Deadlines for submission.* Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year, a fee calculation work sheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets on April 1.

(2) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(3) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report and shall enter such information on the fee calculation work sheet that accompanies the annual report. The source shall recompute the initial fee accordingly and shall remit any underpayment with the report and work sheet. The EPA shall credit any overpayment to the source's account.

(i) *Recordkeeping requirements.* Part 71 sources will retain, in accordance with the provisions of § 71.6(e), all work sheets and other materials used to determine fee payments. Records shall be retained for 5 years following the year in which the emissions data is submitted.

(j) *Fee assessment errors.*

(1) If EPA determines than a source has completed the fee calculation work sheet incorrectly, the permitting authority shall bill the applicant for the corrected fee or credit overpayments to the source's account.

(2) Each source notified by the permitting authority of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the permitting authority.

(3) An owner or operator of a part 71 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the permitting authority along with the assessed fee. The permitting authority shall, within 90 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the part 71 source.

(k) *Remittance procedure.*

(1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice.

(l) *Penalty and interest assessment.*

(1) The permitting authority shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points.

(2) The permitting authority shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.

(3) Part 71 sources shall be assessed a penalty of 50 percent on underpayments computed under paragraph (h)(3) of this section when the underpayment is in excess of 20 percent of the initial estimated fee amount and interest as computed under paragraph (l)(1) of this section on that portion of the underpayment in excess of 20 percent of the initial fee amount.

(m) *Failure to remit fees.* The permitting authority shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid. The initial application of a source shall not be found complete unless the source has paid all fees owed.

(n) *Adjustments of fee schedules.*

(1) The fee schedules provided in paragraphs (c)(1) through (c)(4) of this section shall remain in effect until December 31, 1996. Thereafter, the fee schedules shall be changed annually by the percentage, if any, of any annual increase in the Consumer Price Index.

(2) Part 71 permit program costs and fees will be reviewed by the Administrator at least every two years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

(3) When changes to a fee schedule are made based on periodic reviews by the Administrator, the changes will be published in the **Federal Register** as a rule.

(o) *Use of revenue.* All fees, penalties, and interest collected under this part shall be deposited in a special fund in the U.S. Treasury, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the activities required by this part.

§ 71.10 Delegation of part 71 program.

(a) *Delegation of part 71 program.* The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part 71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement.

(b) *Publication of Delegation of Authority Agreement.* The Agreement shall be published in the **Federal Register**.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.*

(1) When a part 71 program has been delegated in accordance with the provisions of this section, except as provided by § 71.7(a)(1)(v), the delegate agency shall provide to the Administrator a copy of each application for a permit, permit renewal, or permit revision (including any compliance plan, or any portion the Administrator determines to be necessary to review the application and permit effectively), each proposed permit, and each final part 71 permit.

(2) The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator.

(3) Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or revision shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.*

(1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or revision) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States. Notwithstanding this prohibition on default permit issuance, permits may be revised on a default basis pursuant to the procedures in § 71.7 (e) and (f).

(g) *EPA objection.*

(1) No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

(i) Comply with paragraph (d) of this section;

(ii) Submit any information necessary to review adequately the proposed permit;

(iii) Process the permit under the procedures required by §§ 71.7 and 71.11;

(iv) Propose or issue a part 71 permit that complies with applicable requirements of the Act or the requirements under this part, except as provided in § 71.7(a)(6); or

(v) Comply with the requirements of § 71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the proposed permit shall not issue and thereafter the Administrator shall issue a part 71 permit to the applicant in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to reopen a permit for cause as provided in § 71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any permit applicant and any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with § 71.11(l)(1).

(j) *Non-delegable conditions.*

(1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

§ 71.11 Administrative record, public participation, and administrative review.

The provisions of paragraphs (a) through (j) of this section shall apply to initial permit issuance, permit renewals, permit reopenings, and significant permit revisions but not to permit revisions qualifying for minor permit revision procedures, de minimis permit revision procedures, or administrative amendments. The provisions of paragraphs (k), (l), and (m) of this section shall apply to all permit proceedings.

(a) *Draft permits.*

(1) The permitting authority shall promptly provide notice to the applicant of whether the application is complete pursuant to § 71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit and follows the same procedures as any draft permit prepared under this section. If the permitting authority's final decision is that the initial decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (a)(4) of this section.

(4) If the permitting authority decides to prepare a draft permit, it shall prepare a draft permit that contains the permit conditions required under § 71.6.

(5) All draft permits prepared under this section shall be publicly noticed and made available for public comment.

(b) *Statement of basis.* The permitting authority shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) *Administrative record for draft permits.*

(1) The provisions of a draft permit shall be based on the administrative record defined in this section.

(2) For preparing a draft permit, the administrative record shall consist of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application or to terminate the permit;

(iii) The statement of basis;

(iv) All documents cited in the statement of basis; and

(v) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

(d) *Public notice of permit actions and public comment period.*

(1) *Scope.*

(i) The permitting authority shall give public notice that the following actions have occurred:

(A) A permit application has been initially denied under paragraph (a) of this section;

(B) A draft permit has been prepared under paragraph (a) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section;

(D) A public comment period has been reopened under paragraph (h) of this section;

(E) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required in the case of administrative permit revisions, or when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.*

(i) Public notice of the preparation of a draft permit, (including a notice of intent to deny a permit application), shall allow at least 30 days for public comment.

(ii) Except as provided under § 71.7(g)(5)(ii)(C), public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(iii) The permitting authority shall provide such notice and opportunity for participation to affected States on or before the time that the permitting authority provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Affected States;

(C) Air pollution control agencies of affected States, Tribal and local air pollution control agencies which have jurisdiction over the area in which the source is located, the chief executives of the city and county where the source is located, any comprehensive regional land use planning agency and any State

or Federal Land Manager whose lands may be affected by emissions from the source;

(D) Any unit of local government including the local emergency planning committee, having jurisdiction over the area where the source is located and to each State agency having any authority under State law with respect to the operation of such source;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for ''area lists'' from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents.*

(i) *All public notices.* All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the permitting authority processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit, except in the case of draft general permits;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information, such as a copy of the draft permit, the statement of basis, the application, relevant supporting materials, and other materials available to the permitting authority that are relevant to the permitting decision.

(F) A brief description of the comment procedures required by paragraph (e) of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

(H) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* Public notice of a hearing may be combined with other notices required under paragraph (d)(1) of this section. Any public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) The information described in paragraph (d)(4)(i) of this section;

(B) Reference to the date of previous public notices relating to the permit;

(C) The date, time, and place of the hearing; and

(D) A brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures.

(5) All persons identified in paragraphs (d)(3)(i) (A), (B), (C), (D), and (E) of this section shall be mailed a copy of the public hearing notice described in paragraph (d)(4)(ii) of this section.

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The permitting authority will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.*

(1) The permitting authority shall hold a hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The permitting authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(4) Whenever a public hearing is held, the permitting authority shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(5) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(6) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. In the case of a program delegated pursuant to § 71.10, if requested by the Administrator, the permitting authority shall make supporting materials not already included in the administrative record available to EPA. The permitting authority may direct commenters to provide such materials directly to EPA. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.

(h) *Reopening of the public comment period.*

(1) The permitting authority may order the public comment period reopened if the procedures of paragraph (h) of this section could expedite the decision making process. When the public comment period is reopened under paragraph (h) of this section, all

persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than 30 days after public notice under paragraph (h)(2) of this section, set by the permitting authority. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the permitting authority.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 71.11 (h)(1) through (h)(4) shall apply.

(3) On its own motion or on the request of any person, the permitting authority may direct that the requirements of paragraph (h)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 30 days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they may be granted to the extent the permitting authority finds it necessary.

(5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.

(7) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.*

(1) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

(2) A final permit decision shall become effective immediately upon issuance of the decision unless a later effective date is specified in the decision.

(j) *Response to comments.*

(1) At the time that any final permit decision is issued, the permitting authority shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The permitting authority will notify in writing any affected State of any refusal to accept recommendations for the permit that the State submitted during the public or affected State review period.

(k) *Administrative record for final permits.*

(1) The permitting authority shall base final permit decisions on the administrative record defined in paragraph (k)(2) of this section.

(2) The administrative record for any final permit shall consist of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments and any new materials placed in the record;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis;

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by the permitting authority. The record shall be complete on the date the final permit is issued.

(4) Material readily available at the permitting authority, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.

(l) *Appeal of permits.*

(1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. Except for revisions qualifying for minor permit revision procedures, de minimis permit revision procedures, or administrative amendments, the 30-day period within which a person may request review under this section begins with the service of notice of the permitting authority's action unless a later date is specified in that notice. For revisions processed pursuant to minor permit revision procedures, the 30-day period within which a person may request review under this section begins on the date after the permitting authority notifies the source and commenters of the final permit action. For revisions processed pursuant to de minimis permit revision procedures, the 30-day period within which a person may request review under this section begins

on the date after the expiration of the permitting authority's period to disapprove the revision or revoke the revision in response to a citizen petition, whichever is applicable. For revisions processed pursuant to administrative amendment procedures, the 30-day period within which a person may request review under this section begins on the date following the expiration of the 60-day period after which the administrative amendment is effective. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this part. The Board must act under paragraph (l) of this section within 30 days of the service date of notice of the permitting authority's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l) (1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the permit applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the permitting authority and agency review procedures are exhausted. A final permit decision shall be issued by the permitting authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Neither the filing of a petition for review of any condition of the permit or permit decision nor the granting of an appeal by the Environmental Appeals Board shall stay the effect of any contested permit or permit condition.

(m) *Computation of time.*

(1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

(n) *Public petitions to the Administrator.*

(1) Any interested person (including the permittee) may petition the Administrator to reopen a permit for cause, and the Administrator may commence a permit reopening on his or her own initiative. However, the Administrator shall not revise, revoke and reissue, or terminate a permit except for the reasons specified in § 71.7(i)(1) or § 71.6(a)(5)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Administrator decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the Administrator to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the Administrator decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, he or she shall initiate proceedings to reopen the permit pursuant to § 71.7(i) or § 71.7(j).

§ 71.12 Prohibited acts.

Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.

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federal register

Thursday
April 27, 1995

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Pilot Operating and Experience Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27210; Amendment No. 121–248]

RIN 2120–AD88

Pilot Operating and Experience Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration amends its pilot qualification requirements for air carrier and commercial operator pilots by upgrading existing operating experience requirements, establishing a new kind of operating experience requirement, and adding requirements that would reduce the potential for an inexperienced pilot in command to be scheduled to fly with an inexperienced second in command pilot. The FAA has determined that recent practices and trends necessitate revising current pilot qualification regulations in the interest of safety to upgrade minimum crew experience and to require pilots to use newly developed knowledge and skills in actual line operations within a short time after training.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Youngblut, Project Development Branch (AFS–240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Background

The FAA is amending part 121 pilot qualification requirements. The FAA published a Notice of Proposed Rulemaking (NPRM), Notice No. 93–1, on the subject (58 FR 15730, March 23, 1993). Most of these amendments are based on a joint government/industry task force committee's recommendation. Three proposals, on second in command (SIC) operating experience, FAA inspector observation of a pilot in command (PIC), and ''satisfactory'' completion of operating experience, are not committee recommendations but are parallel to the basic committee's recommendation. The final amendments are as follows:

1. The present requirement in § 121.434(a), which prohibits a certificate holder from using any person ''as a required crewmember on an airplane unless he has completed, on that type airplane and in that crewmember position, the operating experience requirements required,'' is revised by inserting the work ''satisfactorily'' before the word ''completed.''

2. Operating experience requirements in § 121.434 are amended to require that a PIC completing initial or upgrade training be observed during at least one flight leg by an FAA inspector in all cases, not just when the certificate holder's training program includes simulator training.

3. Operating experience requirements in § 121.434 are amended to require that an SIC must perform SIC duties under the supervision of an appropriately qualified check pilot and to eliminate the current option allowing an SIC to observe the performance of the duties on the flight deck.

4. The hours of operating experience required in § 121.434 are increased for PICs transitioning in Group II airplanes, and reductions in hours are no longer allowed for PIC initial training in Group II airplanes or for initial or transition training for SICs in Group II airplanes.

5. Operating experience requirements for both PICs and SICs in § 121.434 are amended to include requiring four operating cycles (at least two of which must be flown by the pilot). ''Operating cycle'' is defined in the rule as a complete flight segment consisting of a takeoff, climb, enroute portion, descent, and a landing.

6. Operating experience requirements in § 121.434 are amended to require that each PIC and SIC acquire 100 hours of line operating experience for consolidation of knowledge and skills within 120 days after completion of an airman certification practical test or completion of a proficiency check in the new airplane. ''Consolidation'' is defined as the process by which a person through practice and practical experience increases proficiency in newly acquired knowledge and skills. ''Line operating flight time'' is defined as flight time performed in operations under part 121.

7. A new section on operating limitations, § 121.438, requires a PIC, when flying with an SIC who has fewer than 100 flight hours in the type airplane being flown, to make all takeoffs and landings during certain situations. This new section also requires that either a PIC or SIC have at least 75 hours of line operating flight time for that type airplane in order to be assigned to the same flight crew. (This is commonly called ''crew pairing.'')

History

The FAA determined that these amendments were necessary because of airplane accidents and incidents that had occurred at least in part because of inexperienced flight crews. An accident that occurred in Denver in 1987 involved a Continental Airlines McDonnell Douglas DC–9–14 which crashed on takeoff. The National Transportation Safety Board (NTSB) found that the PIC, though an experienced pilot, had very little total flying time in the DC–9 and was not experienced in supervising first officers. The SIC, who was flying the aircraft when it crashed, had little experience in the DC–9 and had not flown for the previous 24 days. A second accident that occurred in New York in 1989 involved a USAir B–737. The NTSB found that the PIC, though experienced as an SIC, had only 138 hours as a PIC in air transport aircraft; the SIC, who had been recently hired and had just qualified for B–737 service, was conducting his first non-supervised line takeoff in a B–737, and also his first takeoff after a 39-day non-flying period.

In response to the problem of inexperienced crews, the FAA issued Air Carrier Operations Bulletin (ACOB) 8–88–1 (January 21, 1988) and guidance to FAA field staff (July 19, 1988). The guidance to field staff requested that principal operations inspectors (POIs) review their certificate holders' policies on crew pairing and scheduling and send copies of these policies to FAA headquarters.

The NTSB recommended (November 3, 1988), based on its investigation of the Denver accident, that the FAA issue requirements that establish minimum experience levels for each PIC and each SIC that would, in effect, ''prohibit the pairing on the same flight of pilots who have less than the minimum experience in their respective positions.''

The FAA reviewed accident data, NTSB recommendations on crew experience, as well as past and present practices and trends in the aviation environment that are affecting crew experience levels. For example, the practice of bidding for flight crew schedules, which is used by air carriers, results in the most experienced pilots obtaining the most desirable schedules and the least experienced pilots obtaining the least desirable schedules. Often the least experienced pilots are assigned to a reserve pool and may have to wait days or weeks before they receive a flight assignment. This system often prevents newly qualified pilots from using and perfecting their new flight skills immediately after qualifying

on a new aircraft. It also increases the likelihood of pairing inexperienced pilots on the same flight.

Also, in recent years manufacturers have introduced a greater number of new aircraft containing more equipment and systems variations within type. Pilots must not only learn different aircraft handling characteristics but they must also be able to work with a variety of aircraft equipment such as automated flight control and flight management systems.

In response to these concerns about the experience level of crews, the FAA requested the Joint Government/industry Task Force on Flight Crew Performance, which was established in 1987, to form a committee to develop recommendations for establishing crew pairing requirements.[1] On September 13, 1990, the committee recommended requiring all certificate holders operating under part 121 to provide a minimum level of experience for pilot crews. Specifically, the committee recommended the consolidation requirements, operating restrictions, and crew pairing restrictions. The FAA has incorporated, with some modifications, those recommendations in this rulemaking.

Comments Discussion

The FAA received 14 comments on the proposed rule. These comments were from air carriers, pilot organizations, the NTSB, and one individual. Most of the commenters voice general support for the rule as a whole but have suggestions for changes to specific requirements. The following is a discussion of general comments and specific comments on each requirement in the rule.

General Comments

NTSB says that the proposed rule effectively responds to its safety recommendations following two accidents involving the pairing of inexperienced pilots (Safety Recommendations A–88–107 and A–90–107 and –108).

The Air Transport Association (ATA) and an individual airline say that the proposed rule is not justified because Air Carrier Operations Bulletin 8–88–1 (issued in 1988 and revised in 1991) effectively provides guidelines in the scheduling and pairing of pilots as well as recommended actions for pilots with low experience levels. ATA says that the proposed rule would add further, unjustified restrictions to this ACOB.

The Boeing Company (Boeing) generally agrees with the proposed rule but says that the changes do not address the practice whereby commercial transport manufacturers' pilots help air carriers to introduce new airplane models into revenue service. Boeing says that the proposed rule would prevent manufacturers from providing this support to air carriers and that this support is needed for safe initial line operations when air carriers do not have pilots with significant experience in airplane models new to carriers.

FAA Response

While the FAA recognizes that many air carriers have initiated crew pairing policies based on the ACOB, the guidance is not mandatory. The FAA intended the guidance as an interim action to be followed by mandatory rules. The FAA believes that the seriousness of the situation warrants rulemaking. Since most air carriers are already complying with the guidance, the FAA does not believe the rulemaking will be an excessive burden to the industry as a whole.

The FAA does not believe this rulemaking will interfere with commercial transport airplane manufacturers providing pilots to assist air carriers during the introduction of new airplane types into revenue service. The FAA believes that this can be accomplished within the rule as proposed and adopted. Sections 121.434(h)(5) and 121.438(b) provide for the Administrator to issue deviations to certificate holders from the line operating experience requirements of § 121.434(g) and the crew pairing limitations of § 121.438(b) if special circumstances warrant.

Comments on Specific Sections

Section 121.431(b)—Applicability

Currently, § 121.431(b) states that the airplane groups and definitions prescribed in § 121.400 apply to subpart O. The amended paragraph (b) adds definitions for the terms ''consolidation,'' ''line operating flight time,'' and ''operating cycle.''

Four comments were received on the definitions and applicability. One commenter says that rather than use the term ''line operating flight time,'' the term ''flight time'' should be used so that all flight time (not just FAR part 121 flying) is counted towards consolidation. Two commenters say that the term ''consolidation'' is misleading in the NPRM because it describes a process by which proficiency is gained through practice and practical experience. Since, currently, pilots take proficiency checks prior to consolidation, commenters suggest that a different term be used.

The Air Line Pilots Association (ALPA) says that the proposed rule should apply to part 135 operations as well. According to ALPA, this would be responsive to NTSB recommendation A–88–137 which recommends minimum experience levels for PICs and SICs in part 135 operations.

FAA Response

The FAA intended that only line operating flight time, which is flight time performed in part 121 operations, be counted towards consolidation. The purpose of consolidation is to provide pilots flight experience in line operations in the airplane type that the pilot is newly qualified within a reasonable time after training in order to consolidate their skills and knowledge. Other flight time outside of a certificate holder's line operations may not provide the same experience.

As stated in the NPRM, the FAA used the term ''consolidation,'' as recommended by the task force committee, with some reservation because the term is used in psychology books to identify a period of time that is part of the training/learning process or that occurs almost immediately after a training or teaching session. While it is true that a defined consolidation period may begin after a pilot has completed a proficiency check, proficiency is increased throughout a pilot's line operating flying experience and proficiency checks are conducted regularly throughout a pilot's career. The FAA believes that ''consolidation'' is an acceptable term for the concept but to avoid any confusion the definition has been revised by changing the words ''becomes proficient'' to ''increases proficiency.''

The FAA is not extending these requirements to part 135 in this rulemaking since it is beyond the scope of the notice. However, the FAA has issued a notice of proposed rulemaking proposing to require that part 135 certificate holders who conduct commuter operations with airplanes for which two pilots are required, or have a passenger seating configuration of 10 or more seats, train and qualify crewmembers in accordance with the requirements of part 121, subparts N and O. [See **Federal Register** 59 FR 64272, dated December 13, 1994.]

[1] This task force was later subsumed by the Air Transportation Personnel Training and Qualifications Advisory Committee, established by FAA Order 1110.115, May 2, 1990, which committee was subsequently subsumed under the Aviation Rulemaking Advisory Committee.

Section 121.434(c)(1)(ii)—Observation by FAA Inspector (Operating Experience)

Currently § 121.434(c)(1)(ii) requires that when a PIC is obtaining operating experience at least one flight leg that includes a takeoff and landing must be observed by an FAA inspector if the certificate holder's approved training program includes simulator training under § 121.409(c) and if a qualifying pilot in command is completing initial or upgrade training specified in § 121.424. The revised paragraph deletes the reference to simulator training in the certificate holder's approved training program. The FAA inspector observation requirement will, therefore, apply to all PICs obtaining operating experience if they are completing initial or upgrade training.

Five comments were received on this issue. Two commenters point out that the original purpose of requiring FAA inspector observation was to validate simulator training. Since the onset of the advanced simulation program (FAR Appendix H) tens of thousands of pilots have been successfully trained using advanced simulation. According to commenters, in view of the excellent experience with advanced simulation, the requirement for FAA observation should now be dropped, not expanded. Adding to this requirement would not enhance safety and would be administratively and financially burdensome. These commenters, as well as three others, say that there is a shortage of available, qualified FAA inspectors and this requirement will cause scheduling programs if personal observation of flight legs by an FAA inspector is required. The result will be costly delays in an airline's ability to use newly qualified PICs. One commenter points out that even under the current system, carriers face significant and expensive delays awaiting the availability of an FAA inspector and that the proposal would exacerbate this problem.

ATA, United, and the Regional Airline Association (RAA) recommend that this proposal be eliminated. ATA points out that if the proposal is implemented, the observation could take place on a pilot's first line trip and could be administered by an inspector who is not qualified on the aircraft being flown.

Three commenters, including American Airlines and RAA, recommend that Designated Examiners and Aircrew Program Designees be allowed to observe the flight leg when FAA inspector schedules are not compatible and completion of the operating experience would be delayed.

FAA Response

The initial observation requirement was implemented to provide an opportunity for the FAA to observe a pilot in performance of his or her duties before the pilot completes initial operating experience if the certificate holder's training program included simulator training. Since almost all certificate holder training programs under part 121 now include simulator training, deleting the reference to simulator training does not significantly affect the current practices of certificate holders or the FAA. The FAA finds that the initial purpose of the observation requirement is still valid: to provide the FAA an opportunity to observe the PIC before he or she assumes unsupervised operations in an airplane; to validate the certificate holder's training program; and to provide the FAA with a quality control mechanism for evaluating the certificate holder's designated check pilot program.

The FAA finds that allowing Designated Examiners or Aircrew Program Designees to substitute for FAA inspectors would not satisfy the purpose of this observation as described above.

Section 121.434(c)(2)—SIC Supervised Operating Experience

Current § 121.434(c)(2) requires that an SIC pilot perform the duties of an SIC under the supervision of a check pilot or observe the performance of the duties on the flight deck. The revision eliminates the option to observe. The revised rule requires that an SIC pilot acquire operating experience by performing actual SIC duties (and not simply by observing another SIC) under the supervision of a qualified check pilot.

Two comments were received on this requirement. Both commenters agree with the proposal and say that it would ensure that newly trained SICs immediately begin consolidating newly developed skills by actually performing line operations and flying the airplane. Both commenters point out that the current system of gaining credit toward operating experience by passively observing another SIC is ineffective and does not promote proficiency. In addition, NTSB says that the proposal is responsive to NTSB recommendation A–88–138 which was issued after a Continental Airlines accident in Denver in November 1987.

Section 121.434(c)(3)—Hours of Operating Experience and Operating Cycles

The current rule requires specific numbers of hours of operating experience for all pilots for initial and transition training in Group I and II airplanes as follows: (1) For initial training: 15 hours in Group I reciprocating powered airplanes, 20 hours in Group I turbopropeller airplanes, and 25 hours in Group II airplanes; (2) For transition training: 10 hours in Group I reciprocating powered airplanes, 12 hours in Group I turbopropeller powered airplanes, and 15 hours for Group II airplanes. The amended rule changes transition training hours for Group II to 25 hours for PICs; 15 hours continues to apply for SICs. The amended rule also requires that operating experience include at least 4 operating cycles (at least 2 as the pilot flying the airplane).

Three comments were received on this issue. Two of the comments overlap with reduction requirements of revised § 121.434(f)(1) and will be discussed in that section of this preamble.

ALPA supports the proposed rule's requirement that the pilot receiving the supervised operating experience be the pilot flying the aircraft in at least two operating cycles. ALPA agrees that this will ensure that qualifying pilots obtain experience in all critical phases of a flight operation (takeoff, climb, en route portion, descent, and landing) and provide safeguards against meeting supervised operating hours without completing all aspects of a cycle (as in long range flights).

Section 121.434(f)—Reduction of Operating Experience Hours

The current rule allows the hours required in § 121.434(c)(3), among other sections, to be reduced up to 50 percent for all pilots by substituting one additional takeoff and landing for each hour of flight. The amended rule continues to allow the reduction for Group I airplanes for initial and transition operating experience and for Group II airplanes for PIC transitional operating experience. The amended rule would not allow PICs meeting initial training operating experience requirements in Group II airplanes or SICs meeting either initial or transition training operating experience in Group II airplanes to reduce the number of required hours of operating experience in these type airplanes.

Two comments were received on this issue, plus two that were submitted as comments on the number of hours required but are discussed here since

they pertain to reducing the required hours. Two commenters state that since the rule requires at least 4 operating cycles (at least 2 as the pilot flying), then PICs and SICs should be allowed to reduce the operating experience time by one hour for each takeoff and landing following the two operating cycles that are required. These commenters also say that the reduction should apply to initial, upgrade, and transition categories.

United Airlines says that ''hour requirements for transition training PICs should be reducible for cycles for Group II airplanes just as is proposed for Group I airplanes'' and that ''if transition training SICs in Group II airplanes also had a 25 hour requirement instead of 15 hours, that time should also be reducible for cycles.''

RAA says that the proposed rule ''appears to limit the reduction option in Group I airplanes to transition only'' and that this option should also apply to initial and upgrade training.

ALPA agrees with the proposal because it would ''eliminate the capability to reduce the required hours of supervised operating experience according to the number of takeoffs and landings for all pilots except those transitioning as pilot in command'' and that ''this will allow an additional amount of time for pilots to become comfortable in their operating seat in their operational environment while under supervision.''

FAA Response

The proposed and final rule state that flight crewmembers may substitute one additional takeoff and landing for each hour of flight up to a maximum reduction of 50 percent (with the exceptions described above). The FAA intends that after completing the four required cycles, a pilot may achieve a reduction in required flight hours for each additional takeoff and landing. This is intended to ensure that pilots obtain adequate hours of line flight experience while still recognizing that short flights, with frequent takeoffs and landings, may provide experience equal to longer flights.

The change that will not allow a reduction for PICs meeting initial operating experience is necessary because of the importance of PICs gaining additional experience operating an aircraft's sophisticated automated equipment during initial operating experience. Both the increase in hours in this category and not allowing any reduction in hours reflect the need for thorough experience in operating the different equipment installed in the airplane. Likewise the reduction for SICs in Group II airplanes has been eliminated because SICs have more responsibilities in the more sophisticated aircraft that have two-person cockpits.

The reduction continues to apply to all pilots in Group I airplanes.

Although the FAA has made no substantive changes to the rule language in the NPRM, paragraph (f) has been rewritten to make the intent clearer.

Section 121.434(g)—Consolidation

This new rule requires that PICs and SICs acquire at least 100 hours of line operating flight time for consolidation of knowledge and skills within 120 days after satisfactory completion of a type rating practical test or an initial proficiency check. In the NPRM, the FAA specifically requested comments on the feasibility and adequacy of the 120-day period. The committee recommended that consolidation consist of 100 hours of line operating flight time and that if the 100 hours was not completed in 120 days, an airman must receive additional training before extending the consolidation period.

Seven comments were received on this requirement. Three commenters say that the 75-hour threshold used for crew pairing (121.438(b)) should also be used for consolidation rather than 100 hours. These commenters say that 75 hours would be sufficient as a minimum number of flight hours within the 120 days to ensure that the newly-acquired piloting skills are not lost once training and testing have ended. In addition, using 75 hours would simplify tracking and recordkeeping requirements associated with both consolidation and crew pairing. Finally, RAA comments that using a 75-hour requirement is further supported because this was the number originally used in the Task Force recommendation.

ALPA recommends that the consolidation period be reduced to 100 days or that refresher training be required. This would ensure the newly trained pilot a timely completion of consolidation with as little interruption as possible.

ALPA also responds to the FAA's projection that 10 percent of crewmembers would not be able to complete consolidation in the required time by saying that airlines should be able to allow crewmembers in consolidation to get the required flight time. ALPA states that during a pilot's consolidation period, instead of being assigned to reserve status, airlines should be able to schedule these crewmembers on a regular basis without any additional costs being incurred. Further, ALPA says that if an airline displaces a line holding pilot to let a reserve pilot fly, there should be no net cost increase because pilots assigned to reserve status are guaranteed monthly minimum pay by the airline regardless of how many hours they fly.

Two commenters, United Airlines and ATA, say that in certain short range operations, consolidation will occur long before the 100 hour requirement is met because of the cycles flown. ATA says that the experience gained by pilots involved in short haul operations from multiple departures and takeoffs should be recognized by the FAA. These commenters therefore recommend a reduction of required consolidation line operating flight time at a rate of one hour for one cycle to a maximum of 50 percent reduction in hours.

RAA says that the proposed rule does not ensure that the clock (to complete consolidation) would begin at the same time for individual pilots. RAA says that it is possible that a PIC and SIC who were checked the same day in the simulator and completed their checks the same day in the aircraft would not have the same time remaining to complete the 100 hours of experience. Thus, RAA recommends that the phrase ''Any part of '' be removed from § 121.434(g)(1).

Alaska Airlines says that the consolidation requirement would have a great economic impact on air carriers because senior pilots would be displaced by junior pilots needing to complete consolidation requirements. Alaska adds that labor unions might not be willing to ''forgo the seniority benefits assured within their agreements without first demanding compensation for those affected by the loss of their seniority rights.''

FAA Response

There is no reduction in consolidation hours allowed for the number of takeoffs and landings. While operating experience hours may be reduced in accordance with revised § 121.434(f), consolidation hours may not be reduced. As stated in the NPRM preamble, the crew pairing committee concluded and the FAA agrees that it is important for a pilot who has qualified in an airplane to have an opportunity to consolidate the newly developed piloting skills and procedural knowledge through substantial line operating experience in the airplane within a reasonably short time after completing training and satisfactorily demonstrating proficiency. Pilots who have satisfactorily completed training and demonstrated proficiency in an airplane and who do not soon thereafter consolidate the newly acquired

knowledge and skills in actual line operations may lose proficiency in the newly acquired knowledge and skills.

The FAA recognizes that the 120-day consolidation period may not start at the same time for every pilot since it either begins after the satisfactory completion of a § 121.441 proficiency check or after the satisfactory completion of any part of the flight maneuvers and procedures portion of either an airline transport pilot certificate with type rating practical test or an additional type rating practical test. The purpose in stating the rule this way with respect to a practical test is to ensure that a pilot certificate rating program will not be extended to the point that a loss of knowledge and skills would occur. By requiring the consolidation period to begin at the completion of any portion of the program, the carrier has an incentive to complete the pilot's rating program within a reasonable period.

The FAA recognizes that the consolidation requirement may affect crew scheduling. How much it will affect scheduling depends on the way carriers are now scheduling pilots who have recently acquired a type rating. The FAA recognizes that there may be some incremental increase in costs to comply with this final rule. However given that carriers have 120 days to complete the consolidation period for its pilots, and that a 30-day extension is available in certain circumstances, with careful scheduling, this consolidation can be accomplished without an excessive burden. It is in the interests of the air carrier, the pilots, and the public that these pilots obtain experience in the airplane within a reasonable time after being qualified.

In response to Alaska Airlines, the FAA notes that although senior pilots may require compensation, reserve pilots normally are paid on a fixed base salary; thus, the total cost of remuneration for both pilots should be the same.

In response to RAA, the FAA has no knowledge of a Task Force recommendation that included a 75-hour consolidation period.

A 100-day consolidation period suggested by ALPA would be beyond the scope of this rulemaking. In addition, the FAA notes that this suggestion was not part of ALPA's minority opinion filed with the Task Force recommendations.

Section 121.434(h)—Exceptions (Pilots Who Have Completed Line Operating Flight Time as an SIC on a Particular Type Airplane)

In the NPRM paragraph (h)(1) said that pilots who have qualified and served as second in command on a particular type airplane (before the effective date of the rule) are not required to complete line operating flight time for consolidation as pilot in command. Similarly, paragraph (h)(2) said that pilots who have completed line operating flight time for consolidation of knowledge and skills while serving as second in command on a particular type airplane (after the effective date) are not required to meet consolidation requirements on the same type airplane.

The one comment received on these requirements does not agree with the proposal. ALPA says that the knowledge and skills required of PICs and SICs differ, and that there may also be substantial differences between aircraft even though they have common type ratings. ALPA also comments that there could be a considerable lapse of time between flying as SIC and PIC with another aircraft flown in between. Thus, ALPA believes that all crewmembers should go through the consolidation process.

FAA Response

The exception permitted by § 121.434(h) addresses upgrade training, specifically, upgrading from SIC to PIC in the same airplane type. It does not include upgrading from flight engineer to SIC in the same type airplane. By definition, upgrade training is that training required for crewmembers who have qualified and served on a particular type airplane before they can serve in another duty position on the same type airplane. In other words, the upgrading pilot would by definition be familiar with that airplane, and the FAA believes that the operational experience requirement along with previous experience on that type airplane adequately addresses consolidation.

The FAA has determined that the language in proposed § 121.434(h)(1) unintentionally limited the grandfathering of current pilots to SICs who may upgrade to PIC at some future point. The FAA intended that all PICs and SICs who have qualified for their positions before the effective date of the final rule would not need to complete consolidation. The rule language has been changed to reflect this intent.

Section 121.434(h)(3)—Refresher Training

New paragraph (h)(3) requires a pilot who flies another airplane type before completing the required 100 hours of line operating flight time to complete refresher training in the airplane for which the pilot has newly qualified. The NPRM states that training must be conducted by a qualified check pilot.

Four comments were received on this requirement. One commenter says that the proposal is not necessary, but if it is kept, then it should also include restrictions from flying other types of aircraft including military reserve aircraft.

Alaska Airlines says that the term ''refresher training'' is vague and could result in inconsistent requirements that were minimal in some cases and stringent in others. Alaska points out that ''re-qualification programs'' are designed to provide students with training to reacquaint them with an aircraft type from which they have been absent for a specific period of time, such as extended military leaves. Alaska says that the proposed rule, in contrast, would deal with students who are current with no appreciable lapses in exposure to the equipment type they would be trained on. This commenter adds that its own re-qualification training program does not require additional flight training for those absent less than 90 days.

United Airlines and ATA say that refresher training should not require a check airman and that it should be conducted by a qualified flight instructor. Thus, the proposed rule should be modified accordingly.

FAA Response

The amount of refresher training depends on the extent of the lapse and what skills and knowledge have been lost during the lapse. As the FAA stated in the NPRM preamble, each certificate holder must develop training objectives for refresher training for each make and model airplane used in part 121 operations. Refresher training should ensure that pilots have retained, or are allowed to regain, the level or proficiency needed to serve in part 121 operations. This qualification training should focus on, among other things, procedural knowledge regarding the operation of the aircraft (e.g., programming the aircraft's flight management system) and other critical skills such as engine inoperative approaches and missed approaches. Refresher training may consist of special purpose operational training or an airplane flight training period when a flight simulator or flight training device is unavailable. Special purpose operational training is described in AC 120–35b, ''Line Operational Simulations: Line-Oriented Flight Training, Special Purpose Operational Training, and Line Operational Evaluation.''

The FAA agrees with the comment that refresher training could be conducted by a check pilot or qualified flight instructor and has changed this final rule accordingly.

The requirement specifies types of aircraft operated by the part 121 certificate holder; it does not include military reserve aircraft or any other aircraft not operated under part 121.

Section 121.434(h)(4)—Extension of Consolidation Period From 120 to 150 Days

New paragraph (h)(4) allows the consolidation period to be extended from 120 days to 150 days if the pilot satisfactorily completes refresher training or a check pilot determines that the pilot has retained an adequate level of proficiency after observing the pilot in a supervised line operating flight.

Four comments were received on this requirement. Alaska Airlines does not believe that any limit on the consolidation period will affect safety or proficiency. As long as a student is determined to be continually proficient through reevaluation by a qualified check pilot, there is no need to limit the length of the consolidation period. Another commenter recommends that the consolidation period be extendable to 180 days, not 150 days.

RAA recommends that carriers have the option of selecting a five-month period for consolidation, rather than 120 days, because most carriers observe a monthly cycle. If consolidation were to start at the beginning of a month, carriers would be limited in the number of flying assignments they could make to new PICs and SICs. RAA states that as many as 25 or 30 days could be lost under this circumstance and that a five-month option would give carriers a greater ability to make assignments to achieve the consolidation objective.

NTSB believes that the 120-day consolidation period is feasible under virtually all circumstances but also supports an extension to 150 days if the required 100 hours of operating flight time cannot be completed in 120 days. However, NTSB stresses that such extensions should be approved only under extenuating circumstances and in strict compliance with the additional requirements of the proposed rule as a whole. Otherwise, the intended consolidation and stabilization of a pilot's newly acquired knowledge and skills would be compromised.

FAA Response

The FAA has determined that extending the consolidation period beyond 150 days is not in the interest of consolidating a newly trained pilot's skills and knowledge. Once training and checking are completed, the pilot needs to practice recently learned skills in line operations in order to master the skills.

The FAA finds that 180 days would be too long to achieve 100 hours of consolidation.

The problem raised by RAA is a scheduling problem; requiring 100 hours of line operating flight time within a 120-day period should not present a problem that cannot be managed since the average pilot flies approximately 60–70 hours per month.

The FAA recognizes that consolidation of skills within 120 days is preferable to an extension; however, for those instances, for any reason, when a pilot has had less than 100 hours in 120 days, it does not seem reasonable to require that the pilot repeat the entire qualification program. A refresher training course should be sufficient to compensate for the lapsed time.

Section 121.434(h)(5)—Deviations From Consolidation Requirements

New paragraph (h)(5) allows the Administrator to authorize deviations from consolidation requirements when: (1) A new certificate holder does not employ any pilots who have met the consolidation requirements, or (2) a certificate holder is adding new airplanes to its fleet, or (3) a certificate holder is reassigning pilots to a new domicile where they will be operating a different aircraft type.

One comment was received on this requirement. Boeing recommends specific language changes to this paragraph so that it would apply to manufacturers as well as to certificate holders and to training programs as well as to certificate holders' operations specifications. Boeing states that without these changes the rule will ''prevent manufacturers from providing the level of support for initial line operations that is required for a safe operation when an air carrier does not have pilots with a significant experience base in an airplane new to the carrier.''

FAA Response

Paragraph (h)(5)(ii) provides that, as one of the circumstances for being eligible for a deviation, a certificate holder adds to its fleet a type airplane not before proven for use in its operations. If a manufacturer provides pilots for the certificate holder's operations and these pilots do not meet the requirements of paragraph (g), the certificate holder would apply for the deviation. Since manufacturers are not part 121 certificate holders, they cannot apply for the deviation.

Section 121.438(a)—Operating Limitations—Takeoffs and Landings

The new rule requires PICs (other than check airmen), when paired with SICs with less than 100 hours of line operational flight time in that type airplane, to make all takeoffs and landings at special airports or under certain conditions.

Two comments on the general nature of the requirement were received. Alaska Airlines says that takeoff and landing decisions should be made by the PIC and be based on the conditions present during the operation. In some cases, the SIC may have more hours in the type airplane than the PIC and would be more experienced in takeoffs and landings in that type airplane. The proposed rule could, therefore, compromise safety.

ALPA agrees with the intent of the proposed rule and supports PICs making takeoffs and landings in cases where SICs have minimal flight hours in the type of airplane being flown. However, ALPA believes that the PIC should have more latitude in making takeoff and landing decisions. For example, in cases of many short flights and poor weather conditions, it could become very fatiguing for the PIC to make every takeoff and landing; in cases such as these, it may be more appropriate for the SIC to make a takeoff or landing.

United Airlines and ATA believe that the proposed rule on special airports is too restrictive and that PICs should have discretion in making this decision on a case-by-case basis determined by operational considerations. United says that certain operations at some special airports are ''entirely unremarkable'' and that PICs should be given the ability to allow SICs to land at such airports. On a similar note, ATA says that in cases where a crew must fly several turnarounds to another special airport in a single day's flying, the PIC should be given the option of allowing the SIC to complete a takeoff and landing.

RAA and another commenter say that proposed § 121.438(a)(2)(vii) would provide an acceptable alternative to the special airports requirement; it would give PICs the prerogative to permit or deny SICs to land or takeoff at a special airport (or for any other conditions).

Alaska Airlines says that the proposed rule would restrict its operations by preventing new first officers from making landings in 30 percent of Alaska's airports and 100 percent of Russia's airports. This would also adversely affect the training process because pilots would be restricted from gaining experience at special airports while their ''procedural awareness is at

its highest level.'' This would detract from the preparation already given the pilot and have a negative impact on safety.

Alaska Airlines states that § 121.438(a)(2)(iii) is too restrictive. Paragraph (a)(2)(iii) requires a PIC to make the takeoff and landing if the runway has water, snow, slush, or similar conditions that may adversely affect airplane performance. Alaska Airlines says that this limitation would force the airlines's PICs to make all landings during the months between September and April or May. This commenter says that proposed § 121.438(a)(2)(iv) which sets forth operating limitations based on the level of braking action on runways would adequately cover the issue of poor runway conditions. Alaska Airlines also points out that the task force originally recommended that ''runway braking action of less than 'good' be the limiting factor in determining when a PIC must make the landing.''

FAA Response

If the SIC has more than 100 hours in the type airplane, the restrictions do not apply. The rule will not restrict SICs from gaining experience at special airports or under certain adverse conditions after they have 100 hours of experience in the type airplane; however, the rule will restrict SICs from gaining that experience within the first 100 hours under circumstances that could compromise safety.

The FAA has determined that requiring PICs to make takeoffs and landings at special airports even though the assigned SIC may have more operational experience in the aircraft is consistent with the operational responsibilities of the PIC. The PIC, by designation, is always in control of the aircraft. If a PIC is too fatigued to make a takeoff or landing, the PIC should not be on duty.

Section 121.438(b)—75-hour Limit (Pairing Limitations)

This new rule requires that either a PIC or SIC have at least 75 hours of line operating flight time for that type airplane in order to be assigned to the same flightcrew. In the NPRM preamble the FAA specifically requested comments on whether the 75-hour limit should be increased to 100 hours as recommended by ALPA. The FAA also requested comments on how this requirement should be applied. The FAA explained in the NPRM preamble that the committee recommendation applies these crew pairing restrictions only to PICs and SICs who are qualifying for those positions for the first time in the airplane, i.e., initial PICs and SICs. The committee recommendation does not apply the restrictions if a pilot is upgrading from SIC to PIC on the same airplane type or is transitioning from one airplane type to another. Under the committee recommendation, a new PIC in a particular type airplane with only 25 hours of operating experience in that airplane could be paired with an SIC who has transitioned from another airplane type and who has only 15 hours of operating experience in the airplane type. This is in contrast to the ALPA recommendation that the restrictions also apply to transitioning pilots.

The FAA proposed in the NPRM that the 75-hour minimum crew pairing restrictions also apply to transitioning pilots.

The rule also provides for authorizing deviations (in paragraphs (b)(1) through (b)(3)) when: (1) A new certificate holder does not employ any pilots who meet the minimum requirements of this paragraph; (2) an existing certificate holder adds to its fleet a type airplane not before proven for use in its operations; or (3) an existing certificate holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the airplanes operated from that domicile.

Eleven comments were received on this subject. Five of these commenters, including United, RAA, and ATA, believe that the 75-hour requirement is sufficient and that it should not be increased to 100 hours as recommended. Supporters of the proposed rule say that any additional hours would increase the burden on air carriers and complicate the crew scheduling process by extending the number of months necessary to complete the required number of hours. RAA says that any of the three components of the entire proposed rule (consolidation, operating limitations, and crew pairing) would achieve what the FAA is seeking since none of these constraints currently exist; thus, additional hourly requirements related to crew pairing are unnecessary. Finally, United, ATA, and RAA say that 75 hours may be an arbitrary number but that it will achieve the FAA's objective without being overly burdensome.

Three commenters are against the 75-hour requirement and recommend using a 100 hour-requirement. ALPA says that these hours should apply to crew position and airplane type and that the hours should begin after supervised operating experience. ALPA also states that previous time in another crew position in the same airplane type should not be counted in the 100 hours. ALPA concludes that 100 hours would more realistically allow a crewmember to become comfortable in the aircraft without concerns for the experience level of other crewmembers.

Similarly, the NTSB believes that 75 hours is insufficient for a crewmember to become comfortable and experienced enough with the airplane type to safely handle a problem if one arises. NTSB recommends that an initial PIC and initial SIC each have at least 100 hours in their respective positions on the airplane in which they have most recently qualified.

The International Federation of Air Line Pilots' Associations believes that the 75 hour requirement should be increased to at least 100 hours post-supervision time for PICs and SICs on airplane type.

Alaska Airlines Expresses concern that 75 hours seems arbitrary and asks whether lengthening the period would improve safety. This commenter further says that ''the longer the period of the pairing restriction, the greater the number of reserve pilots that will be required in order to insure sufficient pilots are available to staff every possible pairing.''

Horizon Air supports the 75 hour requirement but recommends that if it is issued as a final rule, the consolidation requirement in § 121.434(g) be dropped. Horizon estimates that up to 20 percent of its pilots would not complete their consolidation in the requisite time, resulting in refresher training which would be very costly.

Five commenters address the issue of including transitioning pilots in the proposed crew pairing requirement. United Airlines does not object to the requirement applying to all pilots, including transitioning and upgrading pilots although it currently applies pairing restrictions only to initial training pilots.

Similarly, the NTSB believes that crew pairing restrictions (of 100 hours) should apply to upgrading and transitioning pilots. NTSB says that including upgrading pilots would provide PICs with additional seasoning experience before being paired with an inexperienced SIC; and that including transitioning pilots would ensure that they receive the operating experience they need in the newer glass cockpit, automated airplanes before being paired with an inexperienced PIC or SIC.

RAA does not support the inclusion of transitioning pilots and says that ''the event which have been used as a basis for issuing this rule have involved only crewmembers following initial training for their position.'' RAA adds that

transition training is currently successful for hundreds of thousands of pilots and that this should be reason enough to exclude them from the proposed rule.

Alaska Airlines is against the inclusion of transitioning pilots in the proposed rule because they believe that a transitioning pilot is very experienced in an employer's routes and procedures. Because of this overall experience, transitioning to a new airplane type is not that difficult and should not be subject to any crew pairing limitations.

Two commenters address the proposed rule's deviation authority. AMR Eagle, Inc. says that deviation authority should be designed so that carriers can adjust crew pairing guidelines to the complexity of the operation while insuring schedule reliability and safety. AMR recommends that an additional condition be allowed for deviation authority: Operations during the day, VMC where no critical flight conditions are expected.

RAA says that the conditions for deviation authority presented in §§ 121.438 (b)(1) through (b)(3) are too limiting and recommends that a fourth paragraph be added which states: ''The certificate holder identifies circumstances not covered in (1), (2) or (3) which are acceptable to the Administrator in granting a deviation to these requirements.''

Finally, Boeing requests that the deviation applicability be extended to manufacturers.

FAA Response

The FAA believes that the increased level of safety attained in this final rule is accomplished through the combination of its requirements (i.e., strengthening initial operating experience requirements, requiring a 100-hour knowledge and skill consolidation period for both SICs upgrading to PIC and PICs transitioning to new or different types of airplanes; requiring PICs, when paired with SICs with fewer than 100 hours of pilot flight time in that aircraft type, to make all takeoffs and landings under certain conditions; and the 75-hour pilot pairing restriction) rather than any one single requirement.

Requiring 75 hours of pilot experience in the type aircraft being flown for either the PIC or the SIC provides an additional level of crew qualification experience. By including transitioning pilots in this rule the FAA establishes that the most important aspect of pilot pairing is total pilot flight experience in the airplane rather than requiring seat-specific experience. Also, rather than experience in the air carrier's procedures or route structure, the purpose of this pairing restriction is to ensure a minimum number of hours of combined pilot experience in that specific type aircraft.

The FAA believes that total pilot crew experience required to meet the 75-hour pilot pairing restriction as proposed and adopted in this rule, in combination with the other requirements contained in this rule and the various pilot training and checking requirements contained in subpart N of part 121, accomplish the FAA's objective of increased safety while not being overly burdensome on the affected certificate holders.

As stated in § 121.438(b), the Administrator may authorize, upon application by the certificate holder, deviations from the pairing requirement that would allow certificate holders to use aircraft manufacturers' pilots to assist in the introduction of new aircraft types into the certificate holder's fleet under certain conditions.

Effective Date

The FAA proposed a 30-day period after issuance of the final rule for carriers to plan and implement a system for scheduling flight crews to meet the new requirements. However, the FAA, in the NPRM, recognized that 30 days may be insufficient and invited comments on a realistic effective date.

Five comments were received on the date. Four commenters say that 30 days is inadequate and recommend a 120-day period. RAA says that the complexity of training programs and crew scheduling warrant additional time to implement changes. ATA says that revisions in crew scheduling software, personnel training, and policy manuals would require a minimum of 120 days. United Airlines recommends a 90-day period between issuance of the final rule and its effective date.

FAA Response

The FAA agrees that a 30-day effective date would not allow enough time for certificate holders to comply with the requirements of this rule. The final rule is effective 120 days after the date of publication in the **Federal Register**.

Response to Comments

Northwest Airlines states that the FAA assumed that including transitioning pilots in the NPRM added no cost to airlines. It presents data showing its costs would amount to $3.7 million for transitional pilots and $380,000 for initial pilots. Northwest's additional costs come from scheduling constraints and from union requirements to pay a previously scheduled pilot who is displaced by a pilot in training.

FAA Response

The FAA estimated the cost of not pairing two inexperienced pilots, transitional or initial, would be the expense of developing an enhanced scheduling computer program. The FAA estimated the cost of developing this program to be $92,000. The FAA contends that through more efficient scheduling via enhanced scheduling software, the industry can avoid paying for displaced pilots.

Alaska Airlines states that it would face higher costs to meet qualification requirements because of its older fleet. It argues that additional training in a simulator or in an aircraft (where modern simulation is unavailable) would require that ''operators have earlier vintage visual or phase I simulators for their older aircraft types. This will automatically create higher costs to fulfill these requirements.''

FAA Response

The NPRM did not require a different training level for older fleets. Obtaining the additional operating experience and consolidation time should not vary significantly from company to company. However, the FAA did not account for each airline's cost structure when costing the proposed rule. The analysis assumed an average cost. If Alaska Airlines had significantly higher training costs, it incurred these costs not as a result of the NPRM, but from other corporate business decisions.

The Airline Pilots Association (ALPA) states that the FAA did not present the assumptions it used to estimate costs. Also, ALPA believes that airlines could minimize costs through efficient scheduling.

FAA Response

The FAA included a list of assumptions it used to estimate the costs of the NPRM in an appendix in detailed regulatory evaluation. The FAA agrees with ALPA that airlines can reduce the cost of the NPRM through efficient scheduling.

Miscellaneous Comments

ATA comments that the objectives of the proposed rule are identical to those contained in FAR 121.652 (High Minimums). ATA says that this rule is obsolete and that if the proposed rule is implemented, then § 121.652 should be rescinded.

FAA Response

Rescinding § 121.652 is beyond the scope of this rulemaking. The FAA does not consider § 121.652 to be obsolete but rather finds that the requirements of that section are necessary.

Editorial Changes

In addition to the changes described above for § 121.434, two editorial changes have been made to improve the organization of the section: (1) The flush paragraph that currently appears after paragraph (b)(3) has been incorporated into new paragraph (a)(3); and (2) the flush paragraph that currently appears after paragraph (f) has been designated as paragraph (i) to appear after new paragraph (h).

In § 121.434(c)(2), a second in command pilot must perform the duties of a second in command under the supervision of an appropriately trained check pilot. In the NPRM, both in the preamble and in the rule language, the FAA used the term ''pilot check airman'' and should have used the term ''check pilot'' as it is presently stated in the rule. A check pilot is a subset of check airman; a check flight engineer is also a subset of check airman. Consequently, the more accurate and precise term for the person supervising a SIC's IOE is ''check pilot.'' Thus, the FAA retains the terminology of ''check pilot'' in this final rule. The FAA considers this a minor, editorial change.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

The FAA estimates the net cost of the final rule over the next 10 years to be approximately $45.2 million, with a present value of $31.3 million (7 percent discount, 1993 dollars). This cost estimate includes the additional expense of a check pilot's time to supervise additional PIC transition training; the expense of consolidating an operating experience of additional flight time training for SICs and PICs; and of a computerized system to assist in pairing newly qualified pilots with experienced pilots.

Operating Experience and Operating Cycles for SIC Candidates

In the regulatory evaluation for the NPRM, the FAA estimated a present value cost of $42.5 million to certificate holders to provide a check airman to supervise the operating experience for SIC candidates, who currently are allowed to sit in the jump seat and observe the performance of SIC duties to gain initial operating experience (IOE). This cost was based on the following assumptions:

(1) The highest level of check airman (check pilot—all checks) was required to supervise the SIC candidate's IOE;

(2) This level of check airman would be paid at a much higher rate than a PIC; and

(3) A previously scheduled PIC and SIC would be displaced by the check airman and the SIC candidate, and these displaced pilots would be compensated for not flying the trip.

For the final rule, the FAA has clarified that the level of ''check airman'' required is not the highest designation level of check airman who can administer all checks, but is instead a lower level most commonly called ''check pilot.'' This line check pilot, (designated as Line Check Pilot-All Seats) is also a check airman, but only to a level which at minimum will allow supervision of IOE with an SIC candidate. This level of check pilot is normally much more numerous within a carrier's pilot population than the check airman originally envisioned, and these pilots normally fly the line as PICs. They receive no additional pay for their status as check pilots, and the difference is best likened to that between a flight instructor and an FAA designated examiner in general aviation.

Since the FAA has clarified that the check pilot supervising the SIC candidate can be a line or regular PIC with the check pilot designation, the original assumptions no longer hold. The FAA has revised these assumptions as follows:

(1) Operators are only required to provide a check pilot who is designated to the minimum level necessary to supervise IOE;

(2) There is a greater availability of check pilots designated to a sufficient level to supervise IOE than the previously estimated higher level ''check airmen-all checks'';

(3) There is little if any difference in salary between a PIC and a PIC ''check pilot''; and

(4) A previously scheduled PIC and SIC would not be displaced by the check pilot and the SIC candidate because normal scheduling can pair these two pilots without displacing other pilots.

The additional operating experience requirements for SIC candidates impose an additional constraint on how operators schedule their pilots. Some of the costs of these constraints can be alleviated by making adjustments in the pilot scheduling system. Costs related to changing the scheduling system are discussed later in this regulatory evaluation. (See the section on Developing Computer Programming.) Other potential costs that cannot be alleviated by changes in the scheduling system have not been quantified because they are difficult to estimate. However, the FAA contends that based on the above set of assumptions, those costs will be considerably smaller than the $42.5 million estimated in the regulatory evaluation for the NPRM.

Operating Experience and Operating Cycles for PIC Candidates

The final rule will increase the number of hours of observed supervised operating experience for transitioning PICs in Group II airplanes and will add operating cycle requirements for both initial and transitional PICs in both Group I and Group II airplanes. The current requirement for transitioning PICs in Group II airplanes is 15 hours of operating experience; the new requirement will increase the hours to 25. The potential cost of this requirement will be the cost to provide a check pilot to observe the PIC candidate for the additional 10 hours.

The FAA estimates that there will be 3,119 transition PICs in Group II airplanes in 1994 assuming that 10 percent of the PICs in Group II airplanes require transition training each year. The cost of this section to air carriers will be to provide a check pilot for the 10 additional hours of supervised operating experience for these transitioning PICs. Check pilots in Group II airplanes are compensated at $127 per hour. The cost of compliance in 1994, therefore, would be $4 million.

Over the years 1994–2003, the requirement that transitioning PIC candidates of Group II airplanes receive an additional 10 hours of supervised operating experience will cost $45.6 million, with a present value of $31.5 million.

Section 121.434(f) of the existing rule allows air carriers to reduce the number of hours of required PIC operating experience by 50 percent by substituting an additional takeoff and landing for each hour of flight. The hours of operating experience for PICs who meet transition training requirements may be reduced by one hour per landing. Although the final rule increases the number of hours of operating experience for transitioning PICs, the allowance for landings in this provision results in a smaller increase in the costs of the additional operating experience hours. The FAA estimates that the savings will be 10 percent of the incremental costs of additional PIC transitional operating experience requirements in Group II airplanes. Over the years 1994 to 2003, the cost savings will be $4.6 million, with a present value of $3.2 million.

The final rule will prohibit the reduction of the required number of operating experience hours for initial Group II PICs. The FAA estimates that under the current rule, the hourly requirements could be reduced by 10 percent by the allowance of one hour per landing and takeoff. Because the final rule removes this allowance, however, it will add the expense of a check pilot for those hours currently reduced. The FAA estimates that the additional cost of prohibiting a reduction of operating experience hours for initial Group II PICs in 1994 equals $99,000 (312 pilots × 25 hrs. × $127/hr. × 10%). Over the next 10 years, the total cost will be $1.1 million, with a present value of $789,000. When this cost is added to the other costs of complying with the new PIC operating experience requirements over the next 10 years, the total cost will be $42.1 (45.6 − 4.6+1.1) million, with a present value of $29 million.

Consolidation of Learning and Skills

Section 121.434(g) of the final rule will require candidate PICs and SICs to acquire 100 hours of line operating experience for consolidation of knowledge and skills within 120 days after the completion of one of the following requirements:

—An airline transport pilot certificate with type rating practical test;

—An additional type rating practical test; or

—A proficiency check for those pilots who already possess a type rating in that particular aircraft.

The final rule will also require that if a pilot who is consolidating his or her skills performs any flight time in another type of airplane operated by the certificate holder before completing the 100 hours, that pilot will have to successfully complete refresher training before returning to the new airplane type. This refresher training will have to be conducted by a qualified instructor or check pilot. If the pilot did not complete the required 100 hours of line operating flight time, the certificate holder could extend the 120-day period to 150 days. In this instance, however, the pilot could be subject to refresher training if a check pilot determined that the pilot had not retained an adequate level of proficiency in the new airplane type.

Section 121.438(a) of the final rule will prohibit SICs who have less than 100 flight hours in the airplane being flown from making takeoffs and landings, unless the PIC is a check pilot, when certain adverse weather and/or runway conditions exist or when the PIC determined that it was prudent to exercise his or her prerogative and make the takeoff or the landing. This restriction will not significantly interfere with the consolidation of learning and skills requirements for SICs, who should be able to acquire 100 hours of operating experience within the 120 days. Therefore, there are no costs associated with this restriction.

The current bidding systems that most air carriers use have resulted in some newly type-rated or proficiency-checked pilots being placed on reserve for the airplanes in which they have recently received practical tests and/or proficiency checks. Thus, these newly rated pilots may not have the opportunity to consolidate their skills.

The Joint Government/Industry Task Force on Flight Crew Performance included a consolidation requirement among their recommendations to the FAA. The FAA finds, therefore, that the current bidding systems could be modified to ensure that affected pilots could consolidate their skills within a 120-day period. To the extent that they fail to do so, there would be additional costs of compliance. The FAA estimates that with current flight times of about 75 hours per month, 90 percent of the affected pilots would consolidate their skills within the 120 days, and all of them would complete consolidation within 150 days. The costs of compliance associated with the 10 percent who could not complete consolidation within 120 days can be separated into two categories: (1) The cost of a supervised line observation flight conducted by a check pilot; or (2) the cost of refresher training.

Supervised Line Observation

A supervised line observation flight for a pilot is conducted if the pilot is going to take longer than 120 days to complete the 100 hours of operating experience. This flight is estimated to take an average of 2 hours. The cost that this requirement will impose will be the cost of providing a check pilot for those 2 hours. For SIC candidates, the check pilot can serve as PIC. Since there is little if any wage differential between PICs and check pilots, little if any additional cost will be imposed by this requirement. For PIC candidates, the check pilot will act as SIC for that supervised observation flight. This would impose an additional cost since check pilots earn more than SICs. The difference in wage between a PIC check pilot and an SIC ranges from $62/hour for Group II pilots and $15/hour for Group I pilots. The total cost of this requirement over the next 10 years is $508,200 dollars with a present value of $351,000.

Refresher Training

If a pilot who is consolidating his or her skills performs any flight time in another type of airplane operated by the certificate holder before completing the 120 hours, he or she will have to successfully complete refresher training before returning to the new airplane type. The FAA estimates that half of the PICs and SICs who do not consolidate their skills will require some refresher training. Air carriers have modules that they use to teach different aspects of a training program. The FAA expects that operators will use these modules to provide pilots the additional training in those areas that the check airmen find them to be deficient. The cost of compliance for the requirement for refresher training, therefore, would be the cost of instructors for those PICs and SICs. The FAA estimates that the refresher training will take an average of three hours and that Group II airplane instructors will be compensated at $127 per hour and Group I instructors at $55 per hour. In 1994, this cost will amount to $218,000. Over the years 1994 to 2003, the costs will total $2.5 million, with a present value of $1.7 million.

Developing Computer Programming

Section 121.438(b) states that ''no person may conduct operations . . . unless, for that type airplane, either the PIC or the SIC has at least 75 hours of

line operating flight time, either as PIC or SIC.'' The cost of implementing crew pairing guidelines would be that of developing software for a scheduling program to pair newly-qualified pilots with experienced pilots. To estimate this cost, the FAA surveyed part 121 Principal Operations Inspectors (POIs) to learn how many carriers currently have internal crew pairing guidelines that will be in compliance with the requirement. Numbers of pilots, airplanes, and airplane types were obtained from FAPA's Pilot Directory of Employers.

Based on the make-up of the airline pilot population, the FAA contends that it should not be difficult to pair a newly qualified pilot with one that already has the required operating experience. For instance, the number of pilots that need operational experience is relatively small compared to the number of experienced pilots. The FAA estimates that approximately 13 percent of pilots employed by major airlines, 7 percent employed by national airlines, and 38 percent employed by regional airlines are currently subject to crew pairing restrictions. In addition, many airlines operate only a few different types of airplanes. Among the majors, where there are an average of 14 pilots per airplane, there are 620 pilots per type of airplane. Among the national air carriers, there are 10 pilots per airplane and an average of 45 pilots per type. Finally, among the regional air carriers, there are 7 pilots per airplane and 76 pilots per type.

The crew pairing requirement could be implemented at a minimal cost to those air carriers that currently do not have crew pairing guidelines. This is because of the large number of pilots per airplane type and because of the number of air carriers that already have established crew pairing guidelines in the absence of this regulation. The cost of implementing crew pairing restrictions would be that of developing a software program to pair newly-qualified pilots with experienced pilots. The FAA estimates that this development will take one programmer one week to modify existing software programs and write the necessary documentation at a cost of $1,300. Based on the survey of POIs, the FAA estimates that 76 air carriers will have to develop a computer program for crew pairing. Thus, the one-time cost of this requirement will be $98,800 ($1,300×76).

Benefits

The final rule will help to prevent accidents that result from the pairing of under-experienced pilots or in which in-type flight skill and knowledge are not consolidated. The FAA has identified two accidents over the past 10 years in which the NTSB determined that the inexperience of the pilots was the probable cause. Of the 145 passengers that were on board these the two airplanes, 30 (20.7 percent) were killed and 31 (21.4 percent) were seriously injured. Both airplanes were destroyed. The airplane in the New York accident also caused damage to a pier and to the approach lighting at LaGuardia Airport.

The benefits of the final rule will be, in part, the number of casualties that it will help to prevent over the next 10 years. To estimate the potential fatal and serious injuries over the next 10 years, the FAA calculated the proportion of passengers killed or seriously injured in such accidents and applied those proportions to the expected average enplacement levels over the next 10 years. The FAA estimates that from 1994 to 2003, the average air carrier airplane will have 183 seats and will carry, on average, 128 people on board—121 passengers and 7 crew members. If this ''average'' airplane were to be involved in an accident similar to the ones in Denver and New York, the FAA estimates the casualty rate of the ''average'' accident would approach that of the Denver and New York accidents. Thus, the number of fatalities would be 26 (128×.207) and the number of serious inquires would be 27 (128×.214).

The FAA uses a value of $2.6 million to estimate the benefit value of preventing a fatality and $500,000 to prevent a serious injury. Thus, the value of preventing the estimated number of fatalities and serious injuries will be $67.6 million (26×$2.6 million) and $13.5 million (27×$500,000) respectively. Added to these amounts are the average replacement value of an air carrier airplane, $11 million, and the value of a major NTSB investigation, $433,500. This brings the total value of preventing one crew-pairing related accident over the next 10 years to $92.5 million ($67.6 million + $13.5 million + $11.0 million + $433,500).

Based on the number of air carrier operations and the number of accidents that have occurred over the past 10 years, the FAA projects that over the next 10 years, in absence of this final rule, another two accidents could occur. The benefits of preventing both of those accidents is $185 million, with a present value of $130 million.

How much of these benefits can be attributed to this final rule is not certain. However, since pilot error and crew inexperience were the probable causes of the Denver and New York accidents, the FAA estimates that the final rule will prevent at least one of the future accidents. Thus, the present value benefits of this final rule will be $65 million ($130 million/2).

Benefit-Cost Comparison

The present value cost of the final rule to require several new and modified operating experience requirements for PICs and SICs will be $33.4 million over the next 10 years. The present value benefit of the final rule by preventing one accident over the next ten years will $65 million. Thus, the FAA has determined that the final rule is cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires agencies to review rules which may have '' a significant economic impact on a substantial number of small entities.''

The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining whether a proposed or existing rule has any significant economic impact on a substantial number of small entities. Based on these criteria, a small air carrier is one that owns 9 or fewer aircraft and a substantial number of carriers is one that is not less than 11 or which is more than one-third of affected small entities.

The FAA has determined that approximately 35 air carriers operating under part 121 could be considered small entities. Based on the FAA's criteria and guidelines, a significant regulatory cost impact to these air carriers ranges from $4,300 for an unscheduled carrier to $61,600 for a scheduled carrier to $110,100 for scheduled carriers whose entire fleet has a seating capacity of more than 60. These values are annualized costs and are expressed in 1993 dollars. Typically, there are about 11 pilots per aircraft for carriers operating Group II airplanes and 6 pilots per aircraft for carriers operating Group I airplanes. Approximately half of these pilots act as PICs, while the other half act as SICs.

For a small scheduled carrier having a fleet seating capacity of more than 60 seats, owning 9 group II airplanes, and employing 99 pilots, the FAA estimates that 5 PICs would need 10 hours of additional transition operating experience at a cost of $6,350 (5×10×$127/hr). Small entities will no

longer be able to take advantage of reducing the required number of experience hours by exchanging one hour of supervised operating experience for one landing and takeoff. Thus, for the 5 PIC candidates, this will result in a cost of $1,600 (5×25 hours×10%×$127/hr). Two PICs would not complete their consolidation within the 120-day period and require a supervised line observation flight by a check pilot at a cost of $248 (2×2 hours×$62/hr); one pilot would require refresher training at a cost of $381 (1×3 hours×$127). The costs of compliance to these carriers will be $8,600, which is less than the $110,100 threshold cost for a significant impact under the regulatory flexibility guidelines described above. Thus, the rule will not have a significant economic impact on a substantial number of these small entities.

Using the same methodology to estimate the cost for a small entity owning 9 turboprop airplanes and employing 54 pilots, 2 PICs would need 10 hours of additional transition operating experience at a cost of $1,100 (2×10×$55/hr). These pilots would also not be able to reduce the number of hours of supervised operating experience at a cost of $275 (2×25 hours×10%×$55/hr). One pilot would not complete consolidation of their learning within 120 days and require a line observation flight at a cost of $30 (1×2 hrs×$15), and 1 pilot needing refresher training at a cost of $165 (1×3 hrs×$55). The FAA estimates that the total cost to a small turboprop-owned air carrier will be $1,570 per year, which is less than the $61,600 threshold for a scheduled air carrier operating planes with less than 60 seats. Thus, the rule will not have a significant economic impact on a substantial number of these small entities.

Finally, a small entity owning 9 reciprocating engine airplanes and employing 54 pilots, 2 PICs would need 10 hours of additional transition operating experience at a cost of $1,100 (2 × 10 × $55/hr). These pilots would also not be able to reduce the number of hours of supervised operating experience at a cost of $275 (2 × 25 hours × 10% × $55/hr). One pilot would not complete consolidation of their learning within 120 days and require a line observation flight at a cost of $30 (1 × 2 hrs × $15), and 1 pilot needing refresher training at a cost of $165 (1 × 3 hrs × $55). The FAA estimates that the total cost to a small turboprop-owned air carrier will be $1,570 per year, which is less than the $4,300 for small unscheduled carriers. Thus, the rule will not have a significant economic impact on a substantial number of these small entities.

International Trade Impact

The final rule will have little impact on international trade. U.S. air carriers operating in international markets would incur some additional costs, primarily for supervised operating experience requirements, whereas foreign air carriers operating in the same markets will not be affected by the final rule. If the cost of the final rule (i.e., $33.4 million over the next 10 years) were borne entirely by U.S. carriers serving international markets, the cost would still represent a negligible amount of the international passenger revenues compared to the $280 billion forecast to be collected between 1993 and 2002.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. For this final rule, the FAA reviewed the SARP of Annex 6, applicable to pilot training for commercial air transportation operations. The FAA has determined that these amendments would not present any differences. The SARP are more general than the FAR, with much of the pilot training to be determined by the State of the Operator.

In reviewing the JAR, the FAA finds that regulations exist that are similar to this final rule, though they are less specific. JAR–OPS 1.945 addresses Conversion Training and Checking. Paragraph (e) of that section states ''Once a conversion course has been started a crew member shall not undertake flying duties on another type or variant until the course is completed or terminated.''

Federalism Implications

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

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 121

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety, and Transportation.

The Amendment

The Federal Aviation Administration amends part 121 of the Federal Aviation Regulations (14 CFR 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.431(b) is revised to read as follows:

§ 121.431 Applicability.

* * * * *

(b) For the purpose of this subpart, the airplane groups and terms and definitions prescribed in § 121.400 and the following definitions apply:

Consolidation is the process by which a person through practice and practical experience increases proficiency in newly acquired knowledge and skills.

Line operating flight time is flight time performed in operations under this part.

Operating cycle is a complete flight segment consisting of a takeoff, climb, enroute portion, descent, and a landing.

3. Section 121.434 is amended by revising the heading; removing the flush paragraph at the end of paragraph (b); removing the words ''the certificate holder's approved training program includes a course of training in an airplane simulator under § 121.409(c)

and'' in paragraph (c)(1)(ii); revising the introductory text of paragraphs (a), (b), and (c); revising paragraphs (b)(2), (c)(2), (c)(3) introductory text, (c)(3)(i), (c)(3)(ii), and (f); designating the flush paragraph following paragraph (f) as paragraph (i); and adding new paragraphs (a)(3), (g) and (h) to read as follows:

§ 121.434 Operating experience, operating cycles, and consolidation of knowledge and skills.

(a) No certificate holder may use a person nor may any person serve as a required crewmember of an airplane unless the person has satisfactorily completed, on that type airplane and in that crewmember position, the operating experience, operating cycles, and the line operating flight time for consolidation of knowledge and skills, required by this section, except as follows:

* * * * *

(3) Separate operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills are not required for variations within the same type airplane.

* * * * *

(b) In acquiring the operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills, crewmembers must comply with the following:

* * * * *

(2) The operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills must be acquired after satisfactory completion of the appropriate ground and flight training for the particular airplane type and crewmember position.

* * * * *

(c) Pilot crewmembers must acquire operating experience and operating cycles as follows:

* * * * *

(2) A second in command pilot must perform the duties of a second in command under the supervision of an appropriately qualified check pilot.

(3) The hours of operating experience and operating cycles for all pilots are as follows:

(i) For initial training, 15 hours in Group I reciprocating powered airplanes, 20 hours in Group I turbopropeller powered airplanes, and 25 hours in Group II airplanes. Operating experience in both airplane groups must include at least 4 operating cycles (at least 2 as the pilot flying the airplane).

(ii) For transition training, except as provided in paragraph (c)(3)(iii) of this section, 10 hours in Group I reciprocating powered airplanes, 12 hours in Group I turbopropeller powered airplanes, 25 hours for pilots in command in Group II airplanes, and 15 hours for second in command pilots in Group II airplanes. Operating experience in both airplane groups must include at least 4 operating cycles (at least 2 as the pilot flying the airplane).

* * * * *

(f) Flight crewmembers may substitute one additional takeoff and landing for each hour of flight to meet the operating experience requirements of this section, up to a maximum reduction of 50% of flight hours, except those in Group II initial training, and second in command pilots in Group II transition training. Notwithstanding the reductions in programmed hours permitted under §§ 121.405 and 121.409, the hours of operating experience for flight crewmembers are not subject to reduction other than as provided in this paragraph and paragraph (e) of this section.

(g) Except as provided in paragraph (h) of this section, pilot in command and second in command crewmembers must each acquire at least 100 hours of line operating flight time for consolidation of knowledge and skills (including operating experience required under paragraph (c) of this section) within 120 days after the satisfactory completion of:

(1) Any part of the flight maneuvers and procedures portion of either an airline transport pilot certificate with type rating practical test or an additional type rating practical test, or

(2) A § 121.441 proficiency check.

(h) The following exceptions apply to the consolidation requirement of paragraph (g) of this section:

(1) Pilots who have qualified and served as pilot in command or second in command on a particular type airplane in operations under this part before August 25, 1995 are not required to complete line operating flight time for consolidation of knowledge and skills.

(2) Pilots who have completed the line operating flight time requirement for consolidation of knowledge and skills while serving as second in command on a particular type airplane in operations under this part after August 25, 1995 are not required to repeat the line operating flight time before serving as pilot in command on the same type airplane.

(3) If, before completing the required 100 hours of line operating flight time, a pilot serves as a pilot in another airplane type operated by the certificate holder, the pilot may not serve as a pilot in the airplane for which the pilot has newly qualified unless the pilot satifactorily completes refresher training as provided in the certificate holder's approved training program and that training is conducted by an appropriately qualified instructor or check pilot.

(4) If the required 100 hours of line operating flight time are not completed within 120 days, the certificate holder may extend the 120-day period to no more than 150 days if—

(i) The pilot continues to meet all other applicable requirements of subpart O of this part; and

(ii) On or before the 120th day the pilot satisfactorily completes refresher training conducted by an appropriately qualified instructor or check pilot as provided in the certificate holder's approved training program, or a check pilot determines that the pilot has retained an adequate level of proficiency after observing that pilot in a supervised line operating flight.

(5) The Administrator, upon application by the certificate holder, may authorize deviations from the requirements of paragraph (g) of this section, by an appropriate amendment to the operations specifications, to the extent warranted by any of the following circumstances:

(i) A newly certificated certificate holder does not employ any pilots who meet the minimum requirements of paragraph (g) of this section.

(ii) An existing certificate holder adds to its fleet an airplane type not before proven for use in its operations.

(iii) A certificate holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the airplanes operated from that domicile.

* * * * *

4. Section 121.438 is added to subpart O to read as follows:

§ 121.438 Pilot operating limitations and pairing requirements.

(a) If the second in command has fewer than 100 hours of flight time as second in command in operations under this part in the type airplane being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command must make all takeoffs and landings in the following situations:

(1) At special airports designated by the Administrator or at special airports designated by the certificate holder; and

(2) In any of the following conditions:

(i) The prevailing visibility value in the latest weather report for the airport is at or below ¾ mile.

(ii) The runway visual range for the runway to be used is at or below 4,000 feet.

(iii) The runway to be used has water, snow, slush or similar conditions that may adversely affect airplane performance.

(iv) The braking action on the runway to be used is reported to be less than ''good''.

(v) The crosswind component for the runway to be used is in excess of 15 knots.

(vi) Windshear is reported in the vicinity of the airport.

(vii) Any other condition in which the PIC determines it to be prudent to exercise the PIC's prerogative.

(b) No person may conduct operations under this part unless, for that type airplane, either the pilot in command or the second in command has at least 75 hours of line operating flight time, either as pilot in command or second in command. The Administrator may, upon application by the certificate holder, authorize deviations from the requirements of this paragraph (b) by an appropriate amendment to the operations specifications in any of the following circumstances:

(1) A newly certificated certificate holder does not employ any pilots who meet the minimum requirements of this paragraph.

(2) An existing certificate holder adds to its fleet a type airplane not before proven for use in its operations.

(3) An existing certificate holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the airplanes operated from that domicile.

Issued in Washington, DC on April 21, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–10282 Filed 4–26–95; 8:45 am]

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federal register

Thursday
April 27, 1995

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

Delinquent Filer Voluntary Compliance Program; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

RIN 1210–AA49

Employee Retirement Income Security Act of 1974; Administration and Enforcement, Delinquent Filer Voluntary Compliance Program

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Rule related notice, reduced civil penalty.

SUMMARY: This Notice announces the implementation of a new Delinquent Filer Voluntary Compliance Program by the Department of Labor's Pension and Welfare Benefits Administration (PWBA). This Program is intended to encourage, through the assessment of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of the Employee Retirement Income Security Act of 1974, as amended, (ERISA).

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: PWBA's Delinquent Filer Voluntary Compliance Program Hotline, (202) 219–8776 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the Department has determined that this program creates a novel method for statutory compliance that will reduce paperwork and regulatory compliance burdens on businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the President's priorities. Therefore, this notice is ''significant'' and subject to OMB review.

Regulatory Flexibility Act Statement

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a regulatory flexibility analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Given the existing requirement on small businesses to file the Form 5500 Series Annual Return/Reports, we believe this delinquency program imposes no significant additional burden on small entities. First, no entity is required to file under this program. Thus, unless a plan sponsor chooses to take advantage of the relief offered by this program, this program would not impose any increased burden on small entities that sponsor pension and welfare benefit plans. Second, the additional documentation that would be required to be submitted under this program is minimal. Third, the program offers a substantial reduction in the penalties that might otherwise be imposed on the entities, including small entities, that participate in the program. A second tier of requirements, in the form of further reduced penalties, has been provided for small plans (those filing Form 5500–C).

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 21 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. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the Department of Labor, Office of IRM Policy, Room N–1301 (1210–0XXX), 200 Constitution Avenue, NW, Wash., DC 20210, and to Allison Herron Eydt, PWBA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20507.

Section 1—Background

The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to $1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA and the Secretary's regulations codified in 29 CFR Part 2520. Pursuant to 29 CFR 2560.502c–2 and 2570.60 *et seq.*, PWBA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $50 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department has decided to implement the Delinquent Filer Voluntary Compliance (DFVC) Program, described herein, under which administrators otherwise subject to the assessment of higher civil penalties will be permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

Section 2—The Delinquent Filer Voluntary Compliance (DFVC) Program

.01 *General.* The DFVC Program is intended to afford eligible plan administrators (described in subsection .02 of this Section) the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely annual reports for plan years beginning on or after January

1, 1988. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the civil penalties specified in Section 3 or Section 4, as appropriate, of this Notice.

.02 *Eligibility for DFVC Program.* The DFVC Program is available only to a plan administrator who complies with each of the requirements of Section 3 or Section 4, as appropriate, of this Notice prior to the date on which the administrator:

(a) is notified in writing, pursuant to 29 CFR 2560.502c–2, of the Department's intention to assess a civil penalty under section 502(c)(2) of ERISA for failure to file a timely annual report; or

(b) is otherwise notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA.

.03 *Effective date.* The DFVC Program described herein shall be effective April 27, 1995. The Department of Labor intends the DFVC Program to be of indefinite duration; however, the Program may be modified from time to time or terminated in the sole discretion of the Department upon publication of notice in the **Federal Register**.

Section 3—Administrators Filing Annual Reports

.01 Plan administrators electing to file a late Form 5500 Series Annual Report under the DFVC Program shall:

(a) *File with the Internal Revenue Service.* Except as provided in Section 3.02, file a complete Form 5500 or Form 5500–C (but not the Form 5500–R), as appropriate, with all required schedules and attachments, by entering at the top center of the first page of the Form, in red, bold print ''DFVC Program'' and mailing the complete Form, along with all required schedules and attachments, to the Internal Revenue Service Center designated in the Form 5500 Series instructions. Do *not* send checks paying penalties under the DFVC Program to the Internal Revenue Service Center.

Note: If a joint employer-union board of trustees or committee is the administrator, at least one employer representative and one union representative must sign the Form.

Current forms and instructions can be obtained by dialing 1–800–TAX–FORM (this is a toll-free number). For prior years, obtain the most current form available. If necessary, mark through the year at the top of the first page and enter the appropriate prior year in red bold print.

(b) *File with the U.S. Department of Labor and Pay Applicable Penalty Amount.* Send a signed and dated copy of the first page of the Form 5500 Series Annual Report filed with the Internal Revenue Service and a check payable to the ''U.S. Department of Labor'' in the amount of the applicable penalty, as determined under Section 3.03, to: DFVC Program, Pension and Welfare Benefits Administration, P.O. Box 277025, Atlanta, GA 30384–7025.

The items that are required to be sent to the Department pursuant to this Section 3.01(b) (i.e., the completed first page of the Form 5500 Series annual report as well as the check made payable to the U.S. Department of Labor) also should contain the notation, in red, bold print ''DFVC Program''. The notation should be located at the top center of each item.

.02 A plan administrator who filed a complete Form 5500 Series Annual Report, including all required schedules and attachments, with appropriate Internal Revenue Service Center prior to the effective date of this DFVC Program, but after the due date for the report, shall only be required to comply with the provision of paragraph (b) of Section 3.01 and, therefore, shall not be required to refile the Form 5500 Series Annual Report with the Internal Revenue Service Center solely for purposes of the DFVC Program.

.03 For each annual report filed under this Section 3, the applicable penalty amount shall be determined as follows:

(a) In the case of an annual report which is filed on or before twelve (12) months after the date on which the annual report was due (without regard to any extensions), $50 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), up to a maximum of $2,500 for From 5500 filers and $1,000 for Form 5500–C filers; or

(b) In the case of an annual report which is filed more than twelve (12) months after the date on which the annual report was due (without regard to any extensions), $5,000 for Form 5500 filers and $2,000 for Form 5500–C filers.

Note: The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA. Therefore, civil penalties, including penalties paid under this DFVC Program, may not be paid from the assets of an employee benefit plan.

.04 Annual reports that are filed with the IRS pursuant to the DFVC Program may be subject to the usual edit checks. Plan administrators will have an opportunity to correct deficiencies, in accordance with the procedures described in 29 CFR 2560.502c–2. The failure to correct deficiencies in accordance with these procedures may result in the assessment of further penalties.

PWBA has prepared a booklet, ''The Trouble-Shooter's Guide To Filing ERISA Annual Reports,'' to assist in preparing the Form 5500 Series. The booklet explains how forms are processed and how to avoid potential filing errors. Copies are available by written request to: U.S. Department of Labor, Pension and Welfare Benefits Administration, Room N–5656, 200 Constitution Ave. N.W., Washington, D.C. 20210.

Section 4—Administrators Electing To File Statements for Apprenticeship and Training Plans or ''Top Hat'' Plans

.01 Administrators of apprenticeship and training plans, described in 29 CFR 2520.104–22, and administrators of pension plans for a select group of management or highly compensated employees, described in 29 CFR 2520.104–23(a) (''top hat plans''), who elect to file the applicable statement(s), described in §§ 2520.104–22, and 2520.104–23, respectively, as a condition of relief from the annual reporting requirements may, in lieu of filing any past due annual report and paying otherwise applicable civil penalties, comply with the following filing requirements:

(a) *Send Form and Pay Applicable Penalty Amount to the U.S. Department of Labor.* For purposes of this requirement, plan administrators must complete items 1a–1c, 2a–2c, 5a–5c, 6a or 6b (as applicable) of the first page of the Form 5500 Annual Report and enter at the top center of the Form, in red, bold print, either ''Apprenticeship and Training Plan/DFVC Program'' or ''Top Hat Plan/DFVC Program'', as appropriate. For purposes of completing item 5c, the plan number for all top hat plans should be 888, and the plan number for all apprenticeship and training plans should be 999. The plan administrator must sign and date the Form.

Note: If a joint employer-union board of trustees or committee is the administrator, at least one employer representative and one union representative must sign the Form.

Send the first page of the completed Form 5500 Annual Report, and a check payable to the ''U.S. Department of Labor'' for the applicable penalty amount, as determined under section 4.01(c), to: DFV Program, Pension and Welfare Benefits Administration, P.O. Box 277025, Atlanta, GA 30384–7025.

The check that is made payable to the U.S. Department of Labor also should contain the notation, in red, bold print ''DFVC Program.'' The notation should be located at the top center of the check.

(b) *File Applicable Statement with the U.S. Department of Labor.* Prepare and file a statement meeting the requirements of §§ 2520.104–22, or 2520.104–23, as appropriate.

The apprenticeship and training plan statement described in § 2520.104–22 must be sent to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

The ''top hat'' statement described in § 2520.104–23 must be sent to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Note: A plan sponsor maintaining more than one ''top hat'' plan is not required to file a separate statement for each such plan. See § 2520.104–23(b).

(c) *Applicable penalty amount.* For purposes of the statements filed under this Section 4, the applicable penalty amount is $2,500, without regard to the number of plans maintained by the same plan sponsor for which statements are filed pursuant to Section 4.01(b) and without regard to the number of plan participants covered under such plan or plans.

Note: The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA, therefore, civil penalties, including penalties paid under this DFVC Program, may not be paid from the assets of an employee benefit plan.

(d) *Multiple ''top hat'' plans.* In the case of plan sponsors maintaining more than one pension plan for a select group of management or highly compensated employees described in § 2520.104–23, the plan administrator shall, for purposes of the DFVC Program, be required to send a copy of the first page of the Form 5500, completed in accordance with Section 4.01(a), without regard to the number of such plans maintained by the plan sponsor, provided that each plan maintained by the sponsor is clearly identified on the first page of the Form 5500 or attachment thereto filed with the Department of Labor.

.02 Administrators who have complied with the requirements of this Section 4 shall be considered as having elected compliance with the exemption(s) and/or alternative method of compliance prescribed in §§ 2520.104–22, or 2520.104–23, as appropriate, for all subsequent plan years.

.03 Acceptance by the Department of a filing and penalty payment made pursuant to this Section 4 does not represent a determination by the Department of Labor as to the status of the arrangement as a plan or particular type of plan under Title I or ERISA or a determination by the Department of Labor that the provisions of §§ 2520.104–22, or 2520.104–23 have been satisfied.

Section 5—Waiver of Right to Notice and Abatement of Assessment

.01 Payment of a penalty under the terms of this DFVC Program constitutes a waiver of an administrator's right both to receive notice of assessment under 29 CFR 2560.502c–2 from the Department and to contest the Department's Assessment of the penalty amount. It should also be noted that payment of a penalty under the DFVC Program does not preclude the assessment of non-filing or late-filing penalties by other Federal agencies, including the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

.02 The Internal Revenue Code (Code) and regulations thereunder require information to be filed on the Form 5500 Series Annual Return/Report and provides penalties for failing to timely file. Under the Code, these penalties apply unless it is shown that the failure to timely file is due to reasonable cause. If the late filing of a Form 5500 Series Annual Return/Report required by the Code may be due to reasonable cause, a cover letter, demonstrating that the failure to timely file was due to reasonable cause, should be attached to the completed Form 5500 Series Annual Return/Report that is filed with the IRS.

Signed at Washington, DC, this 24th day of April, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–10403 Filed 4–26–95; 8:45 am]

BILLING CODE 4510–29–M

federal register

Thursday
April 27, 1995

Part V

Department of Education

Foreign Language Assistance Grants; Notice

DEPARTMENT OF EDUCATION

Foreign Language Assistance Grants

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority for FY 1995 under the Foreign Language Assistance Grants program authorized under part B of title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary establishes a competitive priority to encourage programs that provide instruction in languages that are of major economic or political importance to the United States, but seldom taught in schools.

EFFECTIVE DATE: This priority takes effect on May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ursula Lord, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–5709. 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: Under section 7203 of the Act, the Foreign Language Assistance Grants program provides grants to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

The Senate Committee on Appropriations noted that three-fourth's of the world's population, including some major United States trading partners, speak Japanese, Chinese, Russian, Arabic, or Korean. S. REP. No. 318, 103d Cong. 2d. Sess. 187 (1994). In addition, the Committee pointed out that these languages are seldom offered in our schools and that truly effective language training must begin in the elementary grades. As a consequence, the Committee directed the Department of Education to give funding priority to projects that begin teaching foreign languages in the elementary grades, with the primary focus on the less commonly taught languages such as Japanese, Chinese, Russian, Arabic, or Korean.

The Secretary is implementing the directive of the Committee by giving an application that meets the competitive priority an additional five points.

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition for FY 1995 is published in a separate notice in this issue of the **Federal Register**.

Priority

Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

Projects that propose to establish, improve, or expand foreign language learning in the elementary grades and that focus on Japanese, Chinese, Russian, Arabic, and Korean.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final priority, which will apply only to the FY 1995 grant competition.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, the Secretary has determined that the benefits of the final priority justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7425.

(Catalog of Federal Domestic Assistance Number 84.293A Foreign Language Assistance Grants.)

Dated: April 11, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–10321 Filed 4–26–95; 8:45 am]

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